

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

BESIMA OSMICEVIC
Claimant

APPEAL NO: 12A-UI-00102-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXCEPTIONAL PERSONS INC
Employer

**OC: 11/27/11
Claimant: Appellant (1)**

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Besima Osmicevic (claimant) appealed a representative's January 4, 2012 decision (reference 02) that concluded she was not eligible to receive unemployment insurance benefits because she is working with Exceptional Persons (employer) for enough hours to be considered employed. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 24, 2012. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Lisa Paterno, human resource director. The claimant requested prior to the hearing and Exhibit A was received into evidence at the hearing.

ISSUE:

The issue is whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on October 3, 2007, as a full-time community living counselor. The claimant works 80 hours one week and works no hours the following week, resulting in an average of 40 working hours per week. The claimant is assigned to work in a residential home, serving people with mental illness. The claimant filed for unemployment insurance benefits with an effective date of November 27, 2011, when her employment with First Class Security changed. The claimant continues to work for this employer in the same manner as she did when she was hired.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is still employed at the same hours and wages as her original contract for hire.

871 IAC 24.23(26) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

The claimant was hired as a full-time worker. She is still employed in a full-time position as was agreed to at the time she was hired. The claimant is not considered unemployed. She is disqualified for being unavailable for work.

DECISION:

The representative's January 4, 2012 decision (reference 02) is affirmed. The claimant is not considered partially unemployed. She is disqualified for being unavailable for work. Benefits are denied.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw