

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHASITI V COVERT**  
Claimant

**APPEAL NO. 16R-UI-10915-TN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**A-1 IOWA DENTAL PLLC**  
Employer

**OC: 07/10/16**  
**Claimant: Respondent (2-R)**

Section 96.4-3 – Able and Available  
871 IAC 24.23(26) – Still Employed at Same Hours and Wages as Agreed Upon

**STATEMENT OF THE CASE:**

A-1 Iowa Dental PLLC filed a timely appeal from a representative's decision dated August 5, 2016, reference 02, which held the claimant eligible to receive unemployment insurance benefits beginning July 10, 2016 upon a finding the claimant was employed part-time working on call and was available for her regular hours of work. The decision did not relieve the employer of charges finding the claimant was not performing services in the same pattern of employment as in the base period. After due notice was provided, a telephone hearing was held on September 2, 2016. The employer participated. The claimant did not participate. On September 9, 2016, an administrative law judge decision was entered reversing the adjudicator's determination. Ms. Covert filed a timely appeal with the Employment Appeal Board on October 6, 2016. The Appeal Board remanded the case to the Appeals Bureau to conduct a new hearing and issue an appealable decision. After due notice was provided, a telephone hearing was scheduled for and held on October 26, 2016. Claimant participated. The employer participated by Ms. Sonal Patel, Partner, and Mr. Bishal Patel, Part Owner/Office Manager. Employer's Exhibits 1, 2, and 3 were admitted into the hearing record.

**ISSUE:**

The issue is whether Chasiti Covert is disqualified for being unavailable for work.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: The claimant was hired in September 2015 as a full-time dental assistant working 8:00 a.m. to 5:30 p.m. and was paid \$22.00 per hour. Claimant's immediate supervisor was Mr. Bishal Patel.

Effective March 1, 2016, Ms. Covert's job status as a full-time dental assistant was changed to a part-time/on-call position by the employer and Ms. Covert agreed to the change. The change from full-time employment to part-time/on-call took place because of attendance/punctuality issues that Ms. Covert was having at the time. Ms. Covert agreed to the change and remained employed by the dental office.

Under the terms of the new agreement of employment in effect between the parties as of March 1, 2016, the claimant was guaranteed only one day's work per week as a dental assistant at the rate of \$22.00 per hour. Under the terms of the agreement, the claimant was not guaranteed any more than one day's work per week, but the employer indicated that the office might offer the claimant additional working hours depending on business conditions each week.

Ms. Covert continued to be employed by A-1 Iowa Dental PLLC until approximately mid July 2016 when a separation from employment took place. The employer continued to offer Ms. Covert at least one day's work per week and additional working hours if they were available for the period of March 1, 2016 until the claimant was later separated from employment.

On April 10, 2016, Ms. Covert sent her employer a text message saying that she was starting college on May 11, 2016 and would need to leave work by 4:30 p.m. on Wednesdays for approximately three weeks and stating that she would need to leave work by 4:30 p.m. Monday through Thursdays effective May 31, 2016. A later separation from employment took place. Because the issue of the claimant's job separation was not an issue provided on the notice of hearing and it appears that the job separation has not been adjudicated by Iowa Workforce Development, the administrative law judge will make no finding on the job separation and will remand the issue of the claimant's job separation to the Claims Division for an investigation and determination.

#### **REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the claimant is eligible to receive partial unemployment insurance benefits because her hours as a part-time/on-call worker fluctuated. She is not.

Iowa Code § 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.23(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.

Although the claimant was hired as a full-time worker for A-1 Iowa Dental PLLC in September 2015, the evidence in the record establishes that the claimant's status as a full-time dental assistant was changed to that of a part-time/on-call dental assistant guaranteeing the claimant only one day's work per week effective March 1, 2016. The evidence further establishes that Ms. Covert agreed to the change and remained employed thereafter. The evidence also establishes that under the terms of the agreement to be effective March 1, 2016, A-1 Iowa Dental PLLC agreed to provide the claimant one day's work each week as a dental assistant at her normal rate of pay of \$22.00 per hour. Although the claimant was informed that additional working hours might be given to her, they were not guaranteed by the employer but were based upon the employer's needs and business conditions each week. Inasmuch as the claimant was not guaranteed any minimum number of hours in excess of eight hours per week, one day's work, the fact that she is working fewer hours than she would like does not render her partially unemployed. Where an individual is still working in a part-time job under the same terms and conditions as agreed upon between the parties, the individual is not considered to be partially unemployed. See 871 IAC 24.23(26).

**DECISION:**

The representative's decision dated August 5, 2016, reference 02, is reversed. Claimant is not eligible to receive partial unemployment insurance benefits because she continued to be employed part time or on call working at the same hours and wages as agreed upon between the parties and is not available for work within the meaning of the Employment Security Act. The issue of the claimant's subsequent separation from employment is remanded to the Claims Division for investigation and determination.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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