

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHEILA M BEATY**  
Claimant

**APPEAL NO. 10A-UI-06621-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ACC ENTERPRISES LLC**  
**CEDAR HEALTH**  
Employer

**OC: 04/04/10**  
**Claimant: Respondent (4)**

Iowa Code Section 96.4(3) – Able & Available  
Iowa Code Section 96.4(3) – Still Employed Same Hours and Wages  
Iowa Code Section 96.7(2) – Employer Liability  
Iowa Code Section 96.5(1)(a) – Voluntary Quit to Accept Other Employment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the April 28, 2010, reference 01, decision that allowed benefits effective April 4, 2010 based on an Agency conclusion that the claimant was partially unemployed. After due notice was issued, a hearing was held on August 2, 2010. Claimant Sheila Beaty participated. Michael Blume, Administrator, represented the employer and presented additional testimony through Darla Spratt, Director of Nursing. Exhibits One through Six were received into evidence. The administrative law judge took official notice of the Agency's administrative record of wages reported by the claimant and benefits disbursed to the claimant. The parties waived formal notice of the issues of whether the quit was for good cause attributable to the employer, whether Ms. Beaty quit to accept other employment, and whether Ms. Beaty was discharged for misconduct.

**ISSUES:**

Whether Ms. Beaty has been able to work and available for work since she established the claim for benefits that was effective April 4, 2010.

Whether Ms. Beaty has been partially unemployed from the employer since she established her claim for benefits.

Whether Ms. Beaty separated from the employment for a reason that disqualifies her for unemployment insurance benefits.

Whether the employer's account may be assessed for benefits paid to Ms. Beaty.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Sheila Beaty was employed by ACC Enterprises, L.L.C., d/b/a Cedar Health, as a full-time nursing

assistant from July 2009 until July 14, 2010, when she voluntarily quit to accept other, better employment. Ms. Beaty established a claim for unemployment insurance benefits that was effective April 4, 2010 in response to a significant reduction in her work hours. The decrease in work hours was prompted by a decrease in the patient/resident census. Ms. Beaty continued to be available for full-time employment. Ms. Beaty received partial unemployment benefits for the three-week period of April 4, 2010 through April 24, 2010. Ms. Beaty continued her claim one additional week, but reported wages for that week that exceeded her weekly benefit amount by more than \$15.00 and did not receive benefits for that week. Ms. Beaty discontinued her claim for benefits after the week that ended May 1, 2010. Thereafter, Ms. Beaty's work hours returned to the full-time hours she had worked earlier in the employment.

On July 1, 2010, Ms. Beaty provided the employer with written two-week's notice of her intention to voluntarily quit the employment effective July 14, 2010. At the time Ms. Beaty submitted her resignation, the temporary decrease in available work hours had resolved and did not factor into the decision to quit the employment. Ms. Beaty did indeed start new full-time employment on July 15, 2010.

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

Iowa Code section 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".

An individual shall be deemed partially unemployed in any week in which, while employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars. Iowa Code section 96.19(38)(b).

Iowa Code section 96.7(1) and (2) provides, in relevant part, as follows:

Employer contributions and reimbursements.

1. Payment. Contributions accrue and are payable, in accordance with rules adopted by the department, on all taxable wages paid by an employer for insured work.

2. Contribution rates based on benefit experience.

a. (1) The department shall maintain a separate account for each employer and shall credit each employer's account with all contributions which the employer has paid or which have been paid on the employer's behalf.

(2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

[Emphasis added.]

The weight of the evidence in the record establishes that Ms. Beaty was indeed partially unemployed from April 4, 2010, the date she established her claim for benefits, through May 1, 2010, the date she discontinued her claim for benefits. Ms. Beaty was eligible for the benefits she received for the three-week period of April 4-24, 2010. Because the employer was not providing Ms. Beaty during that period the same sort of full-time hours Ms. Beaty had enjoyed during most of the employment, the employer's account may be charged for the benefits disbursed to Ms. Beaty during the period when her claim was active. The employer cites its written policy against guaranteeing hours as a basis for disqualifying Ms. Beaty unemployment insurance benefits in connection with the period of partial unemployment. But full-time hours were in fact an established condition of the employment from July 2009 until March 2010. In other words, that is what Ms. Beaty worked for the first several months of the employment. The employer's policy is in violation of Iowa Code section 96.15 insofar as it attempts to effect a waiver of Ms. Beaty's right to unemployment insurance benefits in the event of a period of partial unemployment. Such agreements are void under the law. See Iowa Code section 96.15.

The period of partial unemployment ended by June 2010. At that point, Ms. Beaty was again working to such an extent that she was effectively removed from the labor market and no longer met the work availability requirements of Iowa Code section 96.4(3). See 871 IAC 24.23(23).

Iowa Code section 96.5-1-a provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The weight of the evidence indicates that Ms. Beaty voluntarily quit the employment, effective July 14, 2010, for the sole purpose of accepting other, better employment and did in fact perform work for the new employer. The quit was without good cause attributable to the employer and ACC Enterprises, L.L.C., will not be assessed for any benefits paid to the claimant since her separation from the employment. Because Ms. Beaty quit to accept other, better employment, the separation from ACC Enterprises, L.L.C. would not disqualify Ms. Beaty for unemployment insurance benefits in the event she files a new claim for benefits at some future point.

**DECISION:**

The Agency representative's April 28, 2010, reference 01, decision is modified as follows. The claimant was partially unemployed during the period of April 4, 2010 through May 1, 2010 and was eligible for benefits, provided she was otherwise eligible. The employer's account may be assessed for any benefits paid to the claimant for that period. Effective June 1, 2010, the claimant was no longer partially unemployed, was working full-time, no longer met the work availability requirements of the law and was no longer eligible for benefits. Effective July 14, 2010, the claimant voluntarily quit the employment to accept other, better employment. The separation would not disqualify the claimant for unemployment insurance benefits. The quit was without good cause attributable to the employer and the employer's account will not be assessed for any benefits paid to the claimant since her separation from the employment.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs