

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATHERINE K HETTINGER
Claimant

APPEAL NO. 10A-UI-00518-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**HEARTLAND EMPLOYMENT SERVICES
LLC**
Employer

OC: 11/22/09
Claimant: Appellant (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

STATEMENT OF THE CASE:

Katherine Hettinger filed a timely appeal from the January 7, 2010, reference 02, decision that denied benefits effective November 22, 2009 based on an Agency conclusion that she was unduly limiting her work availability. After due notice was issued, a hearing was held on February 18, 2010. Ms. Hettinger participated. Adam Aswegan, Human Resources Manager, represented the employer. The administrative law judge took official notice of the Agency's administrative record of benefits paid to the claimant and wages reported by the claimant since she established her claim for benefits.

ISSUES:

Whether the claimant has been able to work and available for work since establishing the claim for benefits that was effective November 22, 2009.

Whether the claimant was partially unemployed from her employment since November 22, 2009.

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Katherine Hettinger commenced working for the employer as a part-time certified nursing assistant in February 2009 and continues in the employment at this time. At the time Ms. Hettinger commenced the employment, she was assigned to work Tuesdays, Thursdays, and every other weekend. Ms. Hettinger was assigned to the 2:00 p.m. to 10:00 p.m. shift. Ms. Hettinger continued to work that schedule until the summer of 2009 when she commenced working full-time hours. Ms. Hettinger is a college student. Ms. Hettinger returned to school at the end of August 2009 and her work schedule reverted back to what it had been before the full-time summer hours.

In November 2009, the employer announced that all of the part-time high school and college students would thereafter be classified as PRN workers, would not be guaranteed any work hours and would only be placed on the schedule to work when needed. Ms. Hettinger had made no changes in her work availability and continued to be available for her Tuesday, Thursday, and every other weekend shifts. The new schedule went into effect at the beginning of December. After that, Ms. Hettinger was generally scheduled on Tuesdays and some Thursdays. Weekend hours were generally absent, but not always absent, from her work schedule. Ms. Hettinger continued to pick up hours from other employees where possible to supplement the reduced hours assigned to her on the work schedule.

On Saturday, December 26 and Sunday, December 27, the employer wanted Ms. Hettinger to work, but Ms. Hettinger declined the hours because she had previously scheduled plans to travel out of town. For unemployment insurance purposes, December 26 fell within the benefit week that ended that day. For unemployment insurance purposes, December 27, fell within the benefit week that ended January 2, 2010.

Ms. Hettinger established a claim for benefits that was effective November 22, 2009. So far, Ms. Hettinger has received benefits for only three weeks: the weeks ending November 28, December 12 and December 26. Ms. Hettinger has reported her weekly wages since she established her claim for benefits.

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".

Iowa Administrative Code rule 871 IAC 24.23 provides, in relevant part, as follows:

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

24.23(5) Full-time students devoting the major portion of their time and efforts to their studies are deemed to have no reasonable expectancy of securing employment except if the students are available to the same degree and to the same extent as they accrued wage credits they will meet the eligibility requirements of the law.

24.23(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

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).

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. 871 IAC 24.23(26). Contract for hire merely means the established conditions of the employment. See Wiese v. Iowa Dept. of Job Service, 389 N.W.2d 676, 679 (Iowa 1986).

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.

The weight of the evidence indicates that Ms. Hettinger has in general been partially unemployed since the employer changed her work status to on-call, prn, in November 2009. The weight of the evidence indicates that Ms. Hettinger has in general continued to be available to the same extent she was at the time of hire. Ms. Hettinger's unavailability during the weekend of December 26-27 prevented her to from being partially unemployed during the benefit weeks that ended December 26, 2009 and January 2, 2010. One cannot claim partial unemployment on the one hand through loss of weekend shifts and then on the other hand decline the weekend shifts when they are made available. Aside from those two weeks, the evidence indicates that Ms. Hettinger has been partially unemployed since she established her claim for benefits and is therefore eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

DECISION:

The Agency representative's January 7, 2010, reference 02, is modified as follows. The claimant was partially unemployed from the effective date of her claim through the benefit week that ended December 19, 2009. The claimant was not partially unemployed, and not eligible for benefits during the weeks that ended December 26, 2009 and January 2, 2010. Effective January 3, 2010, the claimant was once again partially unemployed and eligible for benefits. The employer is not providing the same work it did as part of the original contract of hire and the employer's account may be assessed for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css