

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SALINA L HICKS**  
Claimant

**APPEAL NO: 19A-UI-01540-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**INSIGHT PARTNERSHIP GROUP LLC**  
Employer

**OC: 12/30/18**  
**Claimant: Respondent (2)**

Section 96.4-3 – Able and Available for Work  
Section 96.4-3 – Same Hours and Wages

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the February 11, 2019, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 7, 2019. The claimant did not respond to the hearing notice and did not participate in the hearing. Amanda Cosgrove, Human Resources Coordinator, participated in the hearing on behalf of the employer. Employer's Exhibit One was admitted into evidence.

**ISSUE:**

The issue is whether the claimant is still employed with the employer for the same hours and wages as contemplated in the original contract of hire.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was hired as a part-time life skills specialist for Insight Partnership Group on August 9, 2017. She was discharged from that employment March 5, 2019.

The claimant worked from 3:00 p.m. to 11:00 p.m. On January 10, 2019, she notified the employer her childcare provider was no longer available for those hours. The employer did not have an opening for a permanent first-shift position but stated it could give her some first-shift hours and the claimant agreed. On January 10 and January 12, 2019, the claimant worked 6.00 hours; on January 14, 15 and 16, she worked 6.25 hours each day; on January 17, 2019, she worked 1.50 hours; on January 18, 2019, she worked 6.25 hours; on January 19, 2019, she worked 6.00 hours; on January 21 and January 22, 2019, she worked 6.25 hours; on January 24, 2019, she worked 8.00 hours; on January 25, 2019, she worked 8.25 hours; on January 26 and February 1, 2019, she worked 8.00 hours; on February 2 and February 3, 2019, she worked 8.25 hours; on February 13, 2019, she worked 1.00 hours; on February 14, 15 and 16, 2019, she worked 8.25 hours each day; on February 20 and February 21, 2019, she worked 2.5 hours; and on February 22 and February 23, 2019, she worked 8.00 hours (Employer's Exhibit One). The claimant was scheduled to shadow a community client worker

February 26 and February 27, 2019, but was a no-call/no-show both days and her employment was terminated March 5, 2019.

The employer did not have first-shift hours available for the claimant February 4 through February 14, 2019 and February 17 through February 25, 2019.

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

For the reasons that follow, the administrative law judge concludes that the claimant was not employed at the same hours and wages as contemplated in the original contract of hire effective January 10, 2019, due to the loss of childcare.

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.

The claimant was hired as a part-time life skills specialist. As a part-time employee she was not guaranteed a certain number of hours. On January 10, 2019, she notified the employer she was no longer available to work her 3:00 p.m. to 11:00 p.m. shift as she lost her childcare. Because the claimant initiated the change in her hours and the employer accommodated her to the best of its ability on the 7:00 a.m. to 3:00 p.m. shift, the change in the claimant's hours was not attributable to the employer. Therefore, the claimant cannot be considered partially unemployed from January 10 through March 5, 2019, at which time her employment was terminated. Consequently, benefits are denied through the week ending March 2, 2019.

**DECISION:**

The February 11, 2019, reference 01, decision is reversed. The claimant was not employed at the same hours and wages as in her original contract of hire between January 10 and March 5, 2019, because she lost her childcare and therefore is not qualified for benefits based on her part-time employment. The employer's account is not subject to charge based on her part-time employment.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/scn