

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SUSAN KELLY

Claimant

APPEAL NO. 14A-UI-05895-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BENJAMIN SNYDER

c/o CONSUMER CHOICES OPTION

Employer

OC: 05/11/14

Claimant: Appellant (4)

Iowa Code § 96.4-3 - Able and Available for Work

STATEMENT OF THE CASE:

Susan Kelly (claimant) appealed an unemployment insurance decision dated June 3, 2014, (reference 02), which held that she was not eligible for unemployment insurance benefits because she is still working the same hours and wages with Benjamin Snyder (employer) as in her original contract of hire. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 1, 2014. The claimant participated in the hearing. The employer participated through Renee McAtee.

ISSUE:

The issue is whether the claimant is working the same hours and wages as in her original contract of hire with this employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired as a part-time personal care provider for Benjamin Snyder on October 25, 2012. Consumer Choices Options manages the client's monthly budget during which 26 personal care hours and 15 supported community living hours are available. The claimant and her husband both provide care for Mr. Snyder and they are both listed on his budget. The claimant also has a full-time, seasonal position with another company preparing tax returns. She finished tax season with her full-time employer and filed a claim for unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is able and available for work. For an individual to be eligible to receive benefits, she must be able to work, available to work, and earnestly and actively seeking work. Iowa Code § 96.4-3; 871 IAC 24.22(2). The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979).

A part-time worker meets the availability requirements and may not be disqualified under Iowa Code § 96.4(3) if the worker is available to the same degree and to the same extent as when the wage credits for the part-time work were accrued. See 871 IAC 24.22(2)f.

In the case herein, the claimant works part time for the employer and continues in that same capacity. However, she separated from her full-time employer at the end of the tax season and filed a claim for unemployment insurance benefits. Under the provisions of Iowa Code § 96.7-2-a(2)(a), if the claimant is receiving the same employment from the employer as during the base period, benefits paid to the individual shall not be charged against the account of the employer. Benefits are allowed, provided she is otherwise eligible.

DECISION:

The unemployment insurance decision dated June 3, 2014, (reference 02), is modified in favor of the appellant. The availability disqualification is removed. Benefits are allowed, provided the claimant is otherwise eligible. The employer's account is not subject to charge.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css