

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KATHRYN D TREVOR**  
Claimant

**APPEAL NO. 13A-UI-04427-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GOOD SAMARITAN SOCIETY INC**  
Employer

**OC: 01/13/13**  
**Claimant: Appellant (1)**

Section 96.4-3 – Still Employed At Same Hours & Wages

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from a representative's decision dated April 10, 2013, reference 03, which held claimant ineligible to receive unemployment insurance benefits upon a finding that the claimant was still employed at the same hours and wages as in the original agreement of hire and, therefore, could not be considered to be partially unemployed within the meaning of the law. After due notice, a telephone hearing was held on May 21, 2013. Claimant participated. The employer participated by Ms. K. D. Kalber, Director of Human Resources.

**ISSUE:**

The issue in this matter is whether the claimant is still employed part-time at the same hours and wages as agreed between the parties.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: The claimant began her employment with this employer on November 13, 2009. At that time Ms. Trevor was hired as a part-time charge nurse working 32 hours per week, 16 hours on days and 16 days on evening shifts and was paid \$17.00 per hour. In August 2012, by Ms. Trevor's request, she was changed to a "per diem" employee. In that part-time position Ms. Trevor was guaranteed only 12 working shifts per year and was guaranteed no additional work shifts unless other shifts were available. Ms. Trevor continues to be employed with the Good Samaritan Society as a "per diem" employee at the time of hearing and is not guaranteed any additional hours above 12 shifts per year.

**REASONING AND CONCLUSIONS OF LAW:**

871 IAC 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 question in this matter is whether the evidence in the record establishes that Ms. Trevor is still employed part-time, at the same hours and wages as contemplated when the claimant requested a change to per diem status. It does.

The evidence in the record establishes that Ms. Trevor was initially hired in a part-time position offering 32 hours per week but later by her own request changed to a “per diem” position that guaranteed only 12 shifts per year with no guarantee of any working hours above the 12 shifts per year. The claimant continues to be paid at the same or higher rate of pay as agreed upon in August 2012.

Ms. Trevor is not eligible to receive partial unemployment insurance benefits based upon her “per diem” employment with Good Samaritan Society, Inc. The claimant is still employed per diem at the same agreed upon number of shifts and pay as contemplated in the agreement between the parties established in August 2012. Where an individual is still working in a part-time job under the same terms and conditions as agreed, he or she is not considered partially unemployed. 871 IAC 24.23(26).

**DECISION:**

The representative’s decision dated April 10, 2013, reference 03, is affirmed. Benefits are denied effective January 13, 2013 based upon the claimant’s employment with Good Samaritan Society, Inc. as the claimant is still employed “per diem” at the same hours and wages as contemplated by the parties. Ms. Trevor is not eligible to receive partial unemployment benefits based upon her employment with this employer. The claimant may be eligible for benefits, providing she has sufficient wage credits from other employers in the base period, and meets all eligibility requirements.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

pjs/pjs