

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CAROLYN SAMSON
Claimant

APPEAL NO: 09A-UI-08272-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MEDICAL STAFFING NETWORK INC
Employer

OC: 03/15/09
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Carolyn Samson (claimant) appealed an unemployment insurance decision dated June 1, 2009, reference 01, which held that she was not eligible for unemployment insurance benefits because she is still employed with Medical Staffing Network, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 24, 2009. The claimant participated in the hearing. The employer participated through Jodi Faust, Area Manager and employer representative Peter Cipriano. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant is working the same hours and wages as contemplated at the time of hire.

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 per diem certified nurse's aide on March 8, 2007. She became inactive but started active employment again at August 29, 2008. The claimant was not guaranteed a minimum number of hours and her hours have always varied. She continues to work in this same capacity with no change in her hours or wages.

REASONING AND CONCLUSIONS OF LAW:

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

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".

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 claimant was hired as a per diem, certified nurse's aide with no guaranteed number of hours. There has been no separation from her part-time employment and she is currently working for this employer at the same hours and wages as contemplated in her original contract of hire. The claimant is disqualified from receiving benefits.

DECISION:

The unemployment insurance decision dated June 1, 2009, reference 01, is affirmed. The claimant does not qualify to receive unemployment insurance benefits.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs