

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANITA M GRELL**  
Claimant

**APPEAL NO: 10A-UI-08911-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BICKFORD SENIOR LIVING GROUP LLC**  
Employer

**OC: 05/09/10**  
**Claimant: Respondent (1)**

Section 96.4-3 – Able and Available  
Section 96.19-38 – Partial Unemployment  
Section 96.7-2-a – Relief of Charges

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated June 14, 2010, reference 01, that held claimant was still working part time, available for work and eligible for benefits effective May 9, 2010. A telephone hearing was held on August 9, 2010. The claimant, and her Attorney Steve Greenleaf, participated. The employer did not participate.

**ISSUES:**

Whether the claimant is able and available for work.

Whether the claimant is partially unemployed.

Whether the employer may be relieved of benefit charges.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony of the claimant and having considered the evidence in the record, finds: The claimant began working as a full-time CMA/CNA on November 1, 2007. The employer advised the claimant on May 8, 2010 that she would be moved to a PRN, as needed employee, and the claimant filed a claim for partial unemployment benefits effective May 9. The claimant separated from employment on May 17 that is an issue involved in a subsequent department matter.

**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 Code section 96.19-38 provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. 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.

An individual shall be deemed partially unemployed in any week in which the individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

The administrative law judge concludes that the claimant was able and available for full-time work when the employer moved her to a part-time, PRN status employee on May 8, 2010. The claimant is entitled to receive partial benefits in any week she earns less than her weekly benefit amount plus fifteen dollars.

Iowa Code section 96.7-2-a(2) provides:

2. Contribution rates based on benefit experience.

a. (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.

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.

An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

Since the claimant worked full-time for the employer in her base period of employment, the employer is not granted a relief of benefit charges.

**DECISION:**

The department decision dated June 14, 2010, reference 01, is affirmed. The claimant is able and available for work, and eligible for benefits effective May 9, 2010. The employer is not relieved of benefit charges.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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