

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATHERINE M GIERS
Claimant

APPEAL NO. 14A-UI-04191-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LIVE A BETTER LIFE INC
Employer

OC: 02/23/14
Claimant: Appellant (2)

Section 96.4-3 - Able to and Available for Work

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated April 14, 2014, reference 01, that concluded she was working the same hours and wages as her original contract of hire and was not available for work. A telephone hearing was held on May 12, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. No one participated in the hearing on behalf of the employer.

ISSUE:

Is the claimant eligible for unemployment insurance benefits?
Was the claimant able to and available for work?

FINDINGS OF FACT:

The claimant worked for the employer as a home health aide from May 2011 to November 13, 2013. The claimant worked about 25 to 35 hours per week.

The claimant voluntarily left employment effective November 13, 2013, to care for her mother who was being treated for cancer. In January 2014, the claimant's sister took over caring for her mother and the claimant was again available to work. The claimant contacted the employer in January 2014 and offered to return to work for the employer but her previous job was not available. The claimant was only offered on-call work filling in for absent employees. She did not have any restrictions on the hours she was willing to work.

The claimant only worked one six-hour shift on January 14, 2014, for a sick employee. She regularly contacted the employer afterward and asked for more hours, but no additional work was available.

Because of the lack of work, the claimant filed a new claim for benefits effective February 23, 2014. Her weekly benefit amount was determined to be \$155 based on the wages reported by the employer from October 1, 2012, through September 30, 2013. In April 2014, she moved to Omaha to find a job since the employer had no work for her.

REASONING AND CONCLUSIONS OF LAW:

The Agency determined that that the claimant was employed on-call in the same capacity as she was hired and was not considered available for work under 871 IAC 24.22(2)i(3)

The unemployment insurance rules provide that claimants who work solely on-call during their base periods are not considered unemployed workers. 871 IAC 24.22(2)i(3). In addition, claimants who are working part time at the same number of hours and wages as contemplated in their contract of hire and are not working a reduced workweek are not considered partially unemployed. 871 IAC 24.23(26).

In this case, the claimant was not working on-call during her base-period. And when she applied for benefits, she was not filing for partial unemployment insurance benefits, she was totally unemployed because after she completed her temporary assignment on January 14, the employer had no further work for the claimant and she was laid off.

The rules provide that a claimant is eligible for benefits if “The claimant was employed on a temporary basis for assignment to spot jobs or casual labor work and fulfilled the contract of hire when each of the jobs was completed.” 871 IAC 24.26(19).

In addition, a claimant whose separation is a layoff is qualified to receive benefits, if the claimant is otherwise eligible. The rules define a layoff as “a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of labor-saving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.” 871 IAC 24.1(113)a.

The claimant is qualified to receive unemployment insurance benefits effective February 23, 2014, if she is otherwise eligible.

DECISION:

The unemployment insurance decision dated April 14, 2014, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits effective February 23, 2014, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css