

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARY E GROVES
Claimant

APPEAL NO. 12A-UI-14695-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SANDRA GERST
COMMUNITY ACTION OF SE IOWA
Employer

OC: 10/28/12
Claimant: Appellant (2)

Section 96.4-3 – Still Employed At The Same Hours And Wages

STATEMENT OF THE CASE:

Mary Groves filed a timely appeal from a representative's decision dated December 5, 2012, reference 01, which held the claimant was not eligible to receive partial unemployment insurance benefits from Community Action of Southeast Iowa because the claimant is still employed in her job at the same hours and wages as in the original agreement of hire. After due notice was provided, a telephone hearing was held on January 16, 2013 at which time Ms. Groves participated personally. Participating as a witness for Community Action of Southeast Iowa was Ms. Jan Bindwald.

ISSUES:

The issues in this matter is whether the claimant is still employed at the same hours and wages as agreed upon at the time of hire with Community Action of Southeast Iowa and thus is ineligible to receive partial unemployment insurance benefits from their account and whether the claimant's part-time employment precludes the claimant from being available for other employment.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Mary Groves began training work with Community Action of Southeast Iowa on June 29, 2012 and continues to engage in training work for this organization at the time of hearing. Ms. Groves performs training work as a receptionist on a part-time basis of 20 hours per week working 8:00 a.m. until 12:00 p.m. Monday through Friday and receives pay by the hour.

Community Action of Southeast Iowa engages in training older workers as a participant in the U. S. Department of Labor's Title V Older Worker Training Program administered by the Iowa Department on Aging. The part-time training job filled by Ms. Groves is exempt because it is part of a work training program assisted or financed by a federal agency for an individual receiving work training.

In the work training that is provided to Ms. Groves the claimant is paid by Community Action of Southeast Iowa and the training entity is reimbursed for the claimant's wages through the Generations Area Agency on Aging that receives federal funding to the federal Older Americans Act to provide training for older workers. The training is to improve the claimant's job skills and employability and that although the claimant performs part-time training services, she is free to seek and apply for other employment while still engaged in her work training at Community Action of Southeast Iowa.

It is Ms. Groves' position that she has sufficient other wage credits available to her in her base period from her previous full-time employment with Luann Murphy & Company based upon her separation from that full-time employer in April 2012.

REASONING AND CONCLUSIONS OF LAW:

The first question is whether the services that Ms. Groves engages in for Community Action of Southeast Iowa are exempt from being classified as employment. They are. Agency records reflect this organization has exempt status, and is not considered employment.

The evidence in the record establishes that the claimant is in training with Community Action of Southeast Iowa 20 hours per week, but the claimant is free to seek and accept employment and that her training does not unduly limit her availability for prompt re-employment in the general labor market. She is thus able and available for work as required by the provisions of the Employment Security Law. It also appears that the claimant has sufficient wage credits in the base period from other employment available to her on her unemployment claim.

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 evidence in the record establishes that the work training program that Ms. Groves is engaged in does not prohibit the claimant from being available to seek and accept other employment. The claimant's work schedule allows sufficient time for Ms. Groves to seek and

apply for suitable work and the claimant is generally free to accept new employment if it is offered by an employer.

DECISION:

The representative's decision dated December 5, 2012, reference 01, is reversed. The claimant is not employed part-time, but is engaged in an exempt training program, and is able and available for work. Benefits are allowed, providing she is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs