

ISSUE:

Is the claimant still working the same number of hours she has always worked for the employer?

FINDINGS OF FACT:

The claimant started working for the employer on July 12, 2004. The employer hired the claimant to work part-time. During her employment, the claimant has worked an average of 22 hours a week. The claimant's average weekly wage is \$205.00.

After the claimant accepted another job, she asked the employer to reduce her hours starting in mid-July. The employer reduced her hours as the claimant requested. When the claimant's new job did not work out, she asked the employer in September to schedule her to work as many hours as possible. The employer scheduled her to work in the same pattern the claimant has always worked for the employer. This meant there was some weeks the claimant worked 30 hours and a few weeks the employer scheduled her to work 12 hours.

When the claimant learned the employer had not changed her availability from working weekends to anytime, the claimant made sure the employer properly recorded her availability to work. The employer was then able to schedule the claimant to work more hours.

Throughout the course of her employment, the number of hours the claimant worked varied. The employer never guaranteed a minimum number of hours that the claimant would work.

REASONING AND CONCLUSIONS OF LAW:

Each week a claimant files a claim for benefits, she must be able to and available for work. Iowa Code §96.4-3. The regulations specifically state that when 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 a reduced workweek basis different from the contract for hire, the claimant cannot be considered partially unemployed. 871 IAC 24.23(26).

When the claimant established her claim for benefits, she was available to work any hours because she was no longer working for another employer. In September 2005, when the claimant was again available to work as many hours as the employer scheduled her to work, her benefit history indicates there have been only two weeks in which she worked less than hours than she normally worked. There is not pattern of a reduced workweek. Instead, the hours the claimant currently works is similar to the hours she has worked in the past for the employer. Under the facts of this case, the evidence does not establish that the claimant consistently works a reduced workweek. For unemployment insurance purposes, as of September 25, 2005, the claimant is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's October 14, 2005 decision (reference 01) is affirmed. While the claimant is available to work any hours, she continues to work irregular part-time hours for the employer in the same way she has always worked for the employer. As of September 25, 2005, the claimant is not eligible to receive unemployment insurance benefits. The claimant shall remain ineligible to receive unemployment insurance benefits until she reopens her claim and establishes her eligibility to receive benefits.

dlw/pjs