

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARY E GOOSE**  
Claimant

**APPEAL NO. 10A-UI-17108-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SDH EDUCATION WEST LLC**  
Employer

**OC: 12/20/09**  
**Claimant: Appellant (1)**

Section 96.4-3 – Still Employed at Same Hours and Wages

**STATEMENT OF THE CASE:**

Mary Goose filed a timely appeal from a representative's decision dated December 8, 2010, reference 01, which held the claimant not eligible for benefits effective October 31, 2010, upon a finding the claimant was still employed at the same hours and wages as in the original contract of hire and therefore could not be considered partially unemployed. After due notice was issued, a telephone conference hearing was scheduled for and held on January 25, 2011. The claimant participated personally. The employer participated by Dannie Crozier, general manager Drake location.

**ISSUE:**

At issue in this matter is whether the claimant is still employed part-time at the same hours and wages as in the original contract of hire.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all the evidence in the record, finds: The claimant began her employment with SDH Education West in April of 2008 and continues to be employed at the time of hearing. Ms. Goose was hired to work on-call as a member of the organization's catering pool. The claimant was initially paid at the rate of \$10.00 per hour. Ms. Goose is paid at the rate of \$11.36 per hour at the time of hearing.

As an on-call employee, the claimant was not guaranteed any minimum number of working hours each week and was aware that her on-call employment depended upon employer needs.

**REASONING AND CONCLUSIONS OF LAW:**

The question is whether the evidence in the record establishes that Ms. Goose is still employed on-call at the same hours and wages as in the original contract of hire. It does.

The evidence in the record clearly establishes that Ms. Goose was hired in an on-call capacity and that the employer guaranteed no minimum number of working hours each week. The claimant continues to be paid by the hour. The claimant's hourly pay has increased. As an on-call employee, the claimant's hours fluctuate due to business needs. The claimant continues to be employed as an

on-call worker working with no guarantee of minimum hours and continues to be paid by the hour at the time of hearing.

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.

For the above-stated reason, the administrative law judge concludes the claimant cannot be considered to be partially unemployed, as she is still employed on-call at the same hours and wages as contemplated in the original agreement of hire. There was no guarantee as to the minimum number of hours that the claimant would be assigned each week and the original agreement of hire remains in effect. Benefits are denied as of October 31, 2010.

#### **DECISION:**

The representative's decision dated December 8, 2010, reference 01, is affirmed. The claimant is not available for work under the meaning of the Employment Security Law, as she remains employed at the same hours and wages agreed upon at the time of hire. Benefits are denied as of October 31, 2010.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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