

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAMELA A HOLDGRAFER
Claimant

APPEAL NO: 13A-UI-03429-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GENESIS HEALTH SYSTEM
Employer

OC: 02/10/13

Claimant: Appellant (4)

Section 96.19-38-b – Eligibility for Partial Unemployment Insurance Benefits
Section 96.4-3 - Able and Available

STATEMENT OF THE CASE:

Pamela A. Holdgrafer (claimant) appealed a representative's March 15, 2013 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits in conjunction with her employment with Genesis Health System (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 24, 2013. The claimant participated in the hearing. Megan Dark appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant employed by the employer for less than her usual hours and wages even though she remained able and available for work, and was she therefore eligible for full or partial unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on August 1, 2005. She worked full-time as a certified nursing aide (CNA) in the employer's DeWitt, Iowa long-term care nursing facility. Her last day in that position had been November 5, 2012; she went on a medical leave of absence for a personal medical issue beginning November 6, the date she underwent surgery. She was originally on leave for about a month, and then the leave was extended to January 30, 2013. She was advised that her job protection would end as of January 30.

The employer's doctor had given her a restricted release to return for work; she could not lift over 25 pounds, which would have been required for her regular job duties. On March 8 the claimant's doctor fully released her to return to work and she sought to return to work; however, at that time the employer did not have a full-time position available for the claimant. She did return to work on March 11 in a part-time (about 20 hour per week) CNA position. As of April 14 the claimant was offered and accepted a full-time CNA position.

The claimant established an unemployment insurance benefit year effective February 10, 2013. Based upon her full-time employment with the employer, her weekly benefit amount was calculated to be \$255.00. The claimant only filed weekly continued claims for unemployment insurance benefits for the weeks between February 10 and March 9, while she was still under the 25-pound lifting restriction and before she returned to at least part-time employment.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides that a claimant is deemed partially unemployment insurance benefits if she is not employed at her usual hours and wages and earns less than her weekly benefit amount plus \$15.00. Iowa Code §96.19-38-b; 871 IAC 24.23(26).

However, implicit with the concept of allowing benefits for a claimant who is working fewer hours is that the reduction bringing the earned wages low enough to qualify for partial benefits has been because of the choice of the employer, not that the claimant is not able or willing to work the hours available to her. Rather, she must remain available for work on the same basis as when she was previously working. Iowa Code § 96.4-3; 871 IAC 22(2)(a). The reason the claimant had no earnings for the weeks between February 10 and March 9 were primarily because she was not able and available under the same basis as when she was earning her base period wages, and she is thus ineligible for unemployment insurance benefits for that period. 871 IAC 24.23(29).

Beginning on or about March 11, the claimant's availability restrictions were lifted, but the employer was not providing the claimant with substantially the same employment as it provided during her base period. Consequently, the claimant could be qualified to receive partial unemployment insurance for the weeks after March 9 where she only partially employed, if she was otherwise eligible. She did not make weekly claims for those weeks, and so is not otherwise eligible at this time.

DECISION:

The unemployment insurance decision dated March 15, 2013 (reference 01) is modified in favor of the claimant. The claimant is not eligible for partial unemployment insurance benefits for the period of February 10 through March 9, 2013. The claimant could be eligible for partial unemployment insurance benefits effective March 10, if she was otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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