

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LASHAUNDRA C FLETCHER Claimant ABCM CORPORATION Employer	<div>68-0157 (9-06) - 3091078 - EI</div> <div>APPEAL NO. 15A-UI-00982-NT ADMINISTRATIVE LAW JUDGE DECISION</div> <div>OC: 11/30/14 Claimant: Appellant (1)</div>
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Section 96.43 – Still Employed at Same Hours and Wages

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated January 14, 2015 (reference 03) which held the claimant not eligible for partial unemployment insurance benefits, effective December 14, 2014; upon finding that the claimant was employed at the same hours and wages as in the contract of hire and, therefore, could not be considered to be partially unemployed. After due notice was provided, a telephone hearing was held on February 16, 2015. Claimant participated personally. The employer participated by Ms. Tiffany Adams, Human Resource Coordinator.

ISSUE:

At issue in this matter is whether the claimant is still employed part time in the same hours and wages as contemplated in the parties' agreement of hire.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence record, finds: The claimant began her employment with this employer on January 27, 2014 and continued to be employed at the time of hearing. Ms. Fletcher was hired as a full-time recreational assistant, working 40 or more hours a week at the rate of \$12.50 per hour. In the position of recreational assistant, the claimant was required maintain a CDL license and insurability through the company's insurance carrier in order to perform the duties of her job. In November 2014 it came to the employer's attention that the claimant was no longer insurable because of driving infractions that had taken place away from work. Because the claimant was no longer insurable, she was unable to perform the duties that were required of her in her job. Ms. Fletcher was given the choice of being separated from employment at that time or accepting an offer of other employment with the company.

Ms. Fletcher elected not to take a full-time position that was offered to her because of a conflict with her educational pursuits; instead the claimant elected to accept employment as a part-time pre-vocational assistant, working 20 hours per week at the rate of \$12.75 per hour.

Ms. Fletcher continues to be employed as a part-time pre-vocational assistant, working 20 hours per week at \$12.75 per hour at the time of the hearing.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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".

Iowa Admin. Code r. 871-24.23(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.

Although Ms. Fletcher was hired as a full-time worker for ABCM Corporation in January 2014, the evidence in the record establishes that Ms. Fletcher later accepted part-time employment with the employer; offering 20 hours of work per week at \$12.75 per hour as a part-time pre-vocational assistant because Ms. Fletcher was no longer insurable and could not continue to work as a recreational assistant for the company.

When Ms. Fletcher agreed to continue in employment with ABCM Corporation on December 1, 2014, she became employed under a new agreement of hire. The claimant knew she was being hired at that time as a part-time worker and because the claimant is still working part time at the same or greater rate of pay per hour; she, therefore, cannot be considered to be partially unemployed within the meaning of the law. The claimant continues to be employed at the same number of hours and at the same pay as most recently agreed and, therefore, cannot be considered to be partially unemployed. The claimant is disqualified from receiving partial unemployment insurance benefits as of December 14, 2014.

DECISION:

The representative's decision dated January 14, 2015 (reference 03) is affirmed. The claimant is still employed part time at the same hours and wages agreed upon in her most recent contract of hire. She cannot be considered to be partially unemployed within the meaning of the law. Benefits are denied as of December 14, 2014.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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