

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIFFANY M MCGEE
Claimant

APPEAL NO. 10A-UI-15168-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MERCY MEDICAL CENTER-CLINTON INC
Employer

OC: 03/28/10
Claimant: Appellant (2)

Section 96.4-3 – Ability to and Availability for Work

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's November 2, 2010 determination (reference 02) that held the claimant ineligible to receive benefits as of October 3, 2010, because she was not considered partially unemployed. The claimant participated in the hearing. Diane Grant, the director of human resources, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is eligible to receive benefits as of October 3, 2010.

ISSUE:

Is the claimant eligible to receive partial benefits while she works part-time for the employer?

FINDINGS OF FACT:

The claimant established a claim for benefits the week of March 28, 2010, after her employment at DM Services ended. The claimant was found eligible to receive a maximum of \$195.00 a week in benefits.

In late June 2010, the employer hired the claimant to work part-time, or no more than 16 hours a week. The claimant reopened her claim for benefits during the week of October 3, 2010. Since October 3, the claimant has earned wages anywhere from \$48.00 to \$160.00 a week.

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. When a claimant is still employed at a part-time job at the same hours and wages as when she was hired and she is not working a reduced workweek, a claimant is not considered partially unemployed. 871 IAC 24.23(27). This is the regulation the representative relied upon in the November 2 determination. This regulation does not, however, apply to the claimant's situation. Instead, this regulation applies to claimants who have been working part-time and have base period wages with the part-time employer and then establish a claim for benefits. When a person who has been working part-time files a claim for benefits and is still

working part-time, they cannot be considered unemployed or partially unemployed unless they are working a reduced workweek as stated in 871 IAC 24.23(27).

To hold the claimant ineligible from receiving benefits after she accepts part-time employment and has already established a claim for benefits is be contrary to the law and defeats the purpose of the law. 871 IAC 24.23(27) does not apply to the claimant's situation. Therefore, as of October 3, 2010, the claimant is eligible to receive benefits or partial benefits.

Each week she applies for benefits, she must report the wages she earned that week. When the claimant earns less than \$210.00 in weekly wages, she is eligible to receive partial unemployment benefits, if she has met all other eligibility requirements.

The employer is not one of the claimant's base period employers and will not be charged for benefits paid to the claimant during her current benefit year.

DECISION:

The representative's November 2, 2010 determination (reference 02) is reversed. The claimant is eligible to receive benefits or partial benefits as of October 3, 2010. Each week the claimant earns less than \$210.00 in weekly wages, she is eligible to receive partial benefits if she meets all other eligibility requirements. The employer's account is not subject to charge during the claimant's current benefit year.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw