

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SHELLI A OFF
Claimant

BROADLAWNS MEDICAL CENTER
Employer

APPEAL 15A-UI-12521-JP-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/18/15
Claimant: Appellant (2)

Iowa Code § 96.4(3) – Ability to and Availability for Work
871 IAC 24.23(26) – Same Hours and Wages

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 6, 2015 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on January 15, 2016. Claimant participated. Attorney Marlon Mormann participated on behalf of claimant. Employer participated through attorney Jason Craig, nursing director Laura Coyle, and a chief nursing officer. Vice President of Human Resources Julie Kilgore appeared on behalf of the employer but did not testify.

Employer's Exhibits One and Two were admitted into evidence with no objection. Employer's Exhibits Four through Seven were admitted into evidence with no objection. Employer's Exhibit Seventeen was admitted into evidence with no objection. Employer's Exhibit Three was admitted into evidence over claimant's objection. Claimant objected that Employer's Exhibit Three was irrelevant. Claimant's objection was overruled. Claimant's Exhibits A through I were admitted into evidence with no objection. Claimant's Exhibits K through N were admitted into evidence with no objection. Claimant's Exhibit J was admitted into evidence over the employer's objection. The employer objected Claimant's Exhibit J as incomplete and hearsay. The employer's objection was overruled. Claimant's Exhibit O was admitted into evidence over the employer's objection. The employer objected Claimant's Exhibit O as irrelevant and hearsay. The employer's objection was overruled.

ISSUES:

Is the claimant able to and available for work?

Is the claimant still employed at same hours and wages?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed on a varied schedule as a registry nurse. From November 3, 1998 until October 2, 2015 claimant worked her varied schedule but she was not an on-call employee. Claimant was required to make herself available to work a minimum of 32 hours a month. Claimant averaged 40 to 60 hours a week during her employment; however, depending on her schedule she may work more or less. In September 2015, claimant worked 257 hours for the month.

On October 2, 2015, claimant was informed by Ms. Coyle that she was being taken off the work schedule pending an investigation. Ms. Coyle did not inform claimant when the investigation would be concluded. On October 9, 2015, claimant met with Ms. Coyle and Ms. Kirsten regarding the investigation. Claimant was put on probation and was told that she was going to have to complete supervised training before she could return to work. The employer asked claimant for available days to do the training. Claimant told the employer that she had a planned vacation in October 2015. Claimant did not tell the employer that the vacation was from October 23, 2015 through October 30, 2015. On October 12, 2015, claimant e-mailed Ms. Coyle at 4:33 a.m. that she had canceled her vacation (Claimant's Exhibit I and Employer's Exhibit Four). As of sending the e-mail, claimant had not yet signed up for any shifts; she was going to sign up for night shifts later. Claimant was aware the employer wanted her to work during the day but she thought it might let her work on the evenings because the employer needed help covering the shifts. In the e-mail, claimant informed the employer that she was available to work (Claimant's Exhibit I and Employer's Exhibit Four). Later on October 12, 2015, Ms. Coyle left a claimant a voicemail at approximately 3:09 p.m. In the voicemail, Ms. Coyle stated the first time the employer had available for claimant to work was November 4, 2015. Ms. Coyle asked claimant to call her back but claimant did not call her back. On October 14, 2015, claimant sent Ms. Coyle an e-mail stating "The 4th of November will be fine" (Employer's Exhibit Five). Claimant did not have any further contact with the employer until November 4, 2015; when she went to work and started her training. Claimant was paid her base pay rate for the training hours she completed.

Claimant left the state on October 12, 2015; to apply for a different job. Claimant returned on October 21, 2015. Claimant got her plane flight transferrable so she could return at any time.

Claimant did not work for the employer from October 2, 2015 until November 4, 2015.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is partially unemployed effective October 18, 2015 ending November 7, 2015. Benefits are allowed.

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 Code § 96.19-38 provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which while employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

An individual shall be deemed partially unemployed in any week in which the individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full time, if the individual's employment, although temporarily suspended, has not been terminated.

Claimant was hired to be available to work at least 32 hours a month but she was not an on-call employee. Claimant averaged 40 to 60 hours a week for the employer. Claimant was removed from the schedule on October 2, 2015; pending the employer's investigation. On October 9, 2015, the employer told claimant she was allowed to return to work but only for supervised training. On October 12, 2015 at 4:33 a.m., claimant e-mailed Ms. Coyle and informed the employer she was available for work (Claimant's Exhibit I and Employer's Exhibit Four). Claimant's e-mail put the employer on notice that she was available for work. Ms. Coyle left claimant a voicemail later on October 12, 2015, that the first available time for claimant to return was November 4, 2015. Claimant e-mailed Ms. Coyle on October 14, 2015 and agreed to resume work on November 4, 2015 (Employer's Exhibit Five). Although claimant was available to work starting on October 12, 2015, the employer chose not to have her return until November 4, 2015. It is noted that claimant left the state on October 12, 2015 for a job interview and remained out of state until October 21, 2015; however, she testified she made her plane ticket transferrable so she could return at any time if work became available. By setting a return to work date on November 4, 2015, the employer did not make work available for her in October 2015.

Because claimant was not employed under the same hours and wages according to her base-period history, after she filed her claim with an effective date of October 18, 2015, she is considered partially unemployed. Benefits may be allowed based upon reporting of weekly earnings. For the period from the effective date of October 18, 2015 through the week ending November 7, 2015, the employer may be liable for benefit charges to its account.

DECISION:

The November 6, 2015 (reference 01) unemployment insurance decision is reversed. The claimant was partially unemployed and benefits are allowed for the period from the effective date of October 18, 2015 through the week ending November 7, 2015, provided she is otherwise eligible. Claimant is required to report gross wages earned for each week of benefits claimed. The employer's account (075660-000) may be liable for charges.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

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