

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RAELENE M AMANDUS

Claimant

APPEAL NO. 09A-UI-02088-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TRINITY REGIONAL MEDICAL CENTER

Employer

**Original Claim: 11/30/08
Claimant: Respondent (5)**

Iowa Code section 96.4(3) – Able & Available
Iowa Code section 96.4(3) and 96.7(2)(a) – Still Employed Same Hours and Wages
871 IAC 24.1(113)(a) – Layoff

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 2, 2009, reference 01, decision that allowed benefits and that concluded the employer's account could be assessed for benefits. After due notice was issued, a hearing was held on March 3, 2009. Claimant Raelene Amandus participated. Ted Vaughn, Manager of Human Resources, represented the employer and presented additional testimony through Laurie LaValley, Manager of Corporate Rehab and Health Services. At the request of the claimant, the administrative law judge took official notice of the documents submitted for or generated in connection with the January 30, 2009 fact-finding interview. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and wages reported for the claimant.

ISSUES:

Has Ms. Amandus met the work availability requirements of Iowa code section 96.4(3) since she established her claim for benefits?

Since Ms. Amandus established her claim for unemployment insurance benefits, has she been employed under the same conditions as existed prior to the claim?

Is the employer liable for benefits paid to the claimant?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Raelene Amandus commenced her employment with Trinity Regional Medical Center on August 7, 1997. At that time, Ms. Amandus worked as a full-time Rehab Tech. Ms. Amandus worked 80 hours per two-week pay period until Ms. Amandus discontinued to work as a full-time Rehab Tech in February 2007. At that point, Ms. Amandus had commenced taking courses at Iowa Central Community College in Fort Dodge. To accommodate Ms. Amandus' class schedule, her work hours were reduced to 72 hours per two-week pay period. This continued until September 2007. By that point, Ms. Amandus had become a full-time student. Ms. Amandus and the

employer agreed that she would go to p.r.n. or part-time, as-needed status. Ms. Amandus' work hours for 2007 and 2008 are set forth below.

2007 – hours per two-week pay period	2007 – hours per two-week pay period	2008 – hours per two-week pay period	2008 - hours per two-week pay period
1/11 55.8	7/12 56	1/10 42.5	7/10 57.3
1/25 72.70	7/26 81.6	1/24 42.9	7/24 39.5
2/8 64.80	8/9 79.7	2/7 14.7	8/7 43.8
2/22 65.4	8/23 79.6	2/21 20.1	8/21 49.4
3/8 61.9	9/6 74.1	3/6 17.4	9/4 64.6
3/22 49.9	7/20 40	3/20 22.5	9/18 77.7
4/5 66.1	10/4 35.9	4/3 18	10/2 75.3
4/19 47.9	10/18 35.8	4/17 17.2	10/16 69.7
5/3 64.1	11/1 36	5/1 17.4	10/30 33.3
5/17 73.1	11/15 34.9	5/15 18.4	11/13 60.7
5/31 8.1	11/29 29	5/2 0.0	11/26 56.1
6/14 48.4	12/13 35.6	6/12 1.6	12/11 0.3
6/28 77.1	12/27 27	6/26 8	12/24 3.3

Ms. Amandus finished a college externship in July 2008. At that point, her work availability increased and she was again available for full-time work. For the period of June 27 through November 26, 2008, Ms. Amandus averaged 57 hours per two-week pay-period. At the end of November, the employer no longer needed Ms. Amandus' assistance on a regular basis. The employer had Ms. Amandus work less than an hour during the two-week pay-period that ended December 11. The employer last had Ms. Amandus work on December 18, when Ms. Amandus covered the front desk during a staff luncheon. The employer's staffing needs have changed for multiple reasons and the employer has no plans to utilize Ms. Amandus' services in the foreseeable future.

Since July 2008, Ms. Amandus has continued to be available to work full-time work with the employer and has not declined work from the employer. Ms. Amandus takes college courses two nights per week, but continues to be available for full-time day employment. Ms. Amandus has traditionally performed work for the employer during daytime hours.

Ms. Amandus established a claim for unemployment insurance benefits that was effective November 30, 2008 and has received benefits. Trinity Regional Medical Center is Ms. Amandus' only base period employer. Ms. Amandus' base period wages, as reported by the employer to Workforce Development, were as follows: \$7,077.00 for the third quarter of 2007, \$3,751.38 for the fourth quarter of 2007, \$2,592.14 for the first quarter of 2008, and \$5,709.17 for the second quarter of 2008. In addition, Workforce Development records indicate \$5,799.00 in wages for the third quarter of 2008 and \$5,907.00 in wages for the fourth quarter of 2008. Ms. Amandus' average weekly wages during her base period were \$368.00. Ms. Amandus' average weekly wages during the second half of 2008 were \$450.00.

REASONING AND CONCLUSIONS OF LAW:

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".

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. Iowa Code Section 96.19(38)(b).

Workforce Development rule 871 IAC 24.23(26) provides as follows:

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.

"Contract of hire" simply means the established terms or conditions of employment. See Wiese v. Iowa Dept. of Job Service, 389 N.W.2d 676, 679 (Iowa 1986).

Here, the original conditions of employment involved full-time, not part-time employment. The conditions of employment were amended by agreement in February 2007 and again in September 2007, when Ms. Amandus went to p.r.n. status.

Iowa Code section 97.7(1) and (2)(a)(2) provides as follows:

Employer contributions and reimbursements.

1. Payment. Contributions accrue and are payable, in accordance with rules adopted by the department, on all taxable wages paid by an employer for insured work.

2. Contribution rates based on benefit experience.

a. (1) The department shall maintain a separate account for each employer and shall credit each employer's account with all contributions which the employer has paid or which have been paid on the employer's behalf.

(2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

[Emphasis added.]

The analysis of the employer's liability for benefits, and Ms. Amandus' eligibility for benefits, does not end with the statement from the employer and Ms. Amandus that both continue to consider Ms. Amandus a p.r.n. employee. Ms. Amandus' average weekly wages during her base period were \$368.00. During most of that time, Ms. Amandus was on p.r.n. status. Ms. Amandus' average weekly wages during the second half of 2008, during which time she was always on p.r.n. status, were \$450.00. For the period of June 27 through November 26, 2008, Ms. Amandus averaged 57 hours per two-week pay-period. These were the established conditions of the employment during the base period and during the five-month period that immediately preceded Ms. Amandus' claim for unemployment insurance benefits. The p.r.n. label might not have changed, but the established conditions of the employment clearly did.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that since Ms. Amandus established her claim for unemployment insurance benefits, she has not received the same employment from the employer as existed during the base period. The employer's account may be charged for benefits paid to the claimant. Since Ms. Amandus established her claim for benefits, she has continued to be available for full-time work with the employer and has been eligible for benefits, provided she was otherwise eligible.

Workforce Development rule 871 IAC 24.23(20) provides as follows:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

24.23(20) Where availability for work is unduly limited because the claimant is waiting to be recalled to work by a former employer or waiting to go to work for a specific employer and will not consider suitable work with other employers.

Up to now, Ms. Amandus has relied upon advice she received from a Workforce Development representative, who advised Ms. Amandus she need not search for other employment. However, by this time Ms. Amandus has gone from being partially unemployed, to being temporarily unemployed, to being laid off for the foreseeable future. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of work for the employee. See 871 IAC 24.1(113)(a). Hereafter, Ms. Amandus should be required to make an active and earnest search for new, full-time employment by making a minimum of two employer contacts per week.

DECISION:

The Agency representative's February 2, 2009, reference 01, is modified as follows. Since the claimant established her claim for benefits, she has been able and available for work. The claimant is no longer receiving the same employment from the employer that she received during the base period or that she received prior to establishing her claim for benefits. A separation from the employment has occurred in the form of layoff. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant. Hereafter, the claimant shall be required to make an active and earnest search for new, full-time employment by making a minimum of two employer contacts per week.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw