

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SALLY S THOMPSON
Claimant

APPEAL NO. 08A-UI-00429-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 11/25/07 R: 01
Claimant: Appellant (1)**

Iowa Code Section 96.4(3) – Work Search Requirement

STATEMENT OF THE CASE:

Sally Thompson appealed from the January 7, 2008, reference 01, decision that warned her of obligation to make a minimum of two job contacts each week she claimed unemployment insurance benefits. A telephone hearing was scheduled for January 29, 2008. Ms. Thompson participated in the hearing. Exhibit A was received into evidence. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant. The administrative law judge took official notice of the Agency's record of the claimant's weekly report to the Agency via the automated telephone reporting system.

ISSUE:

Whether the claimant was engaged in an active and earnest search for week during the benefit week that ended December 29, 2007.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Sally Thompson established a claim for benefits that was effective November 25, 2007 and received benefits. Ms. Thompson's claim for benefits was prompted by her separation from previous full-time employment. Ms. Thompson's base period wage credits are based on a history of full-time employment. Ms. Thompson has previously been employed in the social services field. At the time Ms. Thompson established her claim for benefits, Ms. Thompson was coded as a group 6 claimant, that is, an individual whose occupation is of a nature that utilizes résumés or who is normally unable, due to factors such as occupation, distance, etc., to make in-person contacts for employment. See 871 IAC 24.2(1)(c)(6). Ms. Thompson made two employer contacts during the benefit week that ended December 15 and during the benefit week that ended December 22, 2007. During the benefit week that ended December 22, Ms. Thompson accepted an offer of employment with Transitional Services of Iowa. Ms. Thompson accepted the offer of employment under the belief that she was accepting a full-time position.

During the benefit week that ended December 29, Ms. Thompson attended a new employee orientation, during which she learned that she was responsible for building her own client

caseload and responsible for creating her own full-time position. During the benefit week that ended December 29, 2007, Ms. Thompson did not make contact with any other potential employers. During the benefit week that ended January 5, Ms. Thompson focused on the new employment with Transitional Services of Iowa and did not contact any other employers. Ms. Thompson continued to make her weekly report to Iowa Workforce Development and continued to receive benefits. Ms. Thompson was functioning under the belief that her employment with Transitional Services of Iowa left her eligible for benefits under a theory of partial unemployment.

Ms. Thompson's compensation is directly related to the client caseload she generates and the direct contact she has with those clients. Ms. Thompson had secured only three cases as of the January 29, 2008 appeal hearing. This translated into eight hours of employment per week. Transitional Services of Iowa also expects Ms. Thompson to market herself and the employer's services to potential clients and potential referring agencies. It is unclear whether Transitional Services of Iowa will compensate Ms. Thompson for her marketing efforts.

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".

The evidence in the record indicates that the employment with Transitional Services of Iowa is not in fact full-time employment. Instead, the employment with Transitional Services of Iowa is part-time employment. Because Ms. Thompson's base period wage credits are based on a history of full-time employment, Ms. Thompson was and is obligated to actively and earnestly pursue full-time employment during each week that she claimed unemployment insurance benefits. During the benefit week that ended December 29, Ms. Thompson learned that the employment with Transitional Services of Iowa was not in fact full-time employment. With that knowledge, Ms. Thompson was obligated to continue to pursue full-time employment and make the requisite job contacts, via résumés or other means. Because Ms. Thompson did not continue to pursue full-time employment during the benefit week that ended December 29, 2007, the administrative law judge cannot conclude that she engaged in the required active and earnest search for full-time work during the benefit week that ended December 29, 2007.

Ms. Thompson's current employment relationship with Transitional Service of Iowa does not fit within the concept of partial unemployment. 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). Partial unemployment arises when a claimant has been engaged in regular full-time employment and

there is a drop in hours or pay. Ms. Thompson has yet to establish regular full-time employment with Transitional Service of Iowa.

If Ms. Thompson desires to continue her claim for unemployment insurance benefits, she continues to be obligated to make an active and earnest search for full-time employment, during each week she claims benefits, by submission of résumés or direct contact with prospective employers. If the current part-time employment with Transitional Service of Iowa interferes with the search for actual full-time employment, this may lead to Ms. Thompson not meeting the work availability requirements of Iowa Code section 96.4(3).

DECISION:

The Agency representative's January 7, 2008, reference 01, decision is affirmed. The claimant did not fulfill her obligation to make an active and earnest search for full-time employment during the benefit week that ended December 29, 2007. Future similar conduct could result in the claimant being ineligible for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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