

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEPHANIE J ROGERS
Claimant

APPEAL NO: 14A-UI-02700-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ABCM CORPORATION
Employer

OC: 02/02/14
Claimant: Appellant (4)

Iowa Code § 96.4(3) – Availability for Work

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's March 3, 2014 determination (reference 01) that held her ineligible to receive benefits because she was not partially unemployed. The claimant participated at the April 2 hearing. Janice Mohr, the claimant's mother, testified on the claimant's behalf. Ted Boefe, the administrator, and Teresa Bruening, the human resource director, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes that as of February 2, the claimant is partially unemployed during weeks she earns \$173.00 or less and is available for work.

ISSUES:

As of February 2, 2014, is the claimant able to and available for work?

Is the claimant still employed at the same hours and wages that she was hired to work?

FINDINGS OF FACT:

In July 2010, the employer hired the claimant to work as a full-time CNA. The claimant was injured at work and was unable to work for over a year. The summer of 2013, the claimant worked 20 to 32 hours a week. The claimant asked the employer to schedule her for overnight shifts. She started working overnight shifts in late November 2013 and was still working an average of 32 hours a week. About the same time the claimant started working overnight shifts; the employer gave her a written warning for on-going attendance issues.

In 2013, the claimant missed work because either she was ill or her son was ill. The claimant notified the employer when she was unable to work. Many times the claimant gave the employer a doctor's statement verifying that either she or son had been ill. When her son was ill, the claimant tried to find her own replacement.

In January 2014 the claimant was absent on January 7 because she was hospitalized. The claimant was also absent on January 15, 17, and 21 through 31 when her son was ill. The claimant properly notified the employer about these absences and provided a doctor's statements verifying that either she or her son had been ill. The claimant had surgery

scheduled for her son on February 11. As a result of the surgery, the claimant planned to take two days of vacation and her mother was going to be with her son the rest of the time.

On February 3, 2014, the employer told the claimant she either had to go on-call or the employer would have to let her go because of her continued absences. The employer's policy informs employees they can be discharged if they have three or more unexcused absences in a 90-day time frame. As an on-call employee the employer gave the claimant the opportunity to work as many hours as she wanted to, but her hours would not be scheduled. The employer asked the claimant come to work on Fridays to look at the hours the employer had available the next week and she could choose the hours she wanted to work the next week. Bruening would call the claimant when there were other available hours.

After the employer changed the claimant to an on-call employee, the claimant established a claim for benefits during the week of February 2, 2014. She filed claims for the weeks ending February 8 through April 29. The claimant reported she earned \$252.00 during the week ending February 8, 2014. The claimant reported she had not earned any wages as of March 2, 2014.

The administrative record indicates a March 3 determination (reference 02) held the claimant ineligible to receive benefits from February 9 through March 1, 2014. The claimant did not appeal this determination.

Since March 1, 2014, the claimant has not gone to her workplace to find out what hours the employer had available for her to work the next week. The claimant only lives down the street from the employer. Bruening contacted the claimant at least once in late March about working. The claimant responded by letting Bruening know she would get back to the employer about whether the claimant had childcare for the open shift. The employer did not receive any other response from the claimant.

REASONING AND CONCLUSIONS OF LAW:

When a claimant is still employed in a part-time job at the same hours and wages as hired and is not working a reduced workweek, the claimant is not partially unemployed. 871 IAC 24.23(26). On February 3, 2014, the employer changed the claimant from a part time employee, who had regularly scheduled hours of work, to an on-call employee. The claimant had not worked as an on-call employee before. Based on this change in her employment, in addition to the fact that the claimant no longer had regularly scheduled hours of work, 871 IAC 24.23(26) does not apply. The claimant may be eligible to receive benefits in weeks in which she is able to and available for work and earns less than \$173.00.

The week ending February 8, 2014, the claimant reported she earned \$252.00 in wages. Since she had excessive earnings this week, she is not eligible to receive benefits for this week. Based on a representative's March 3, 2014 determination, the claimant is not eligible to receive benefits from February 9 through March 1 or the weeks ending February 15, 22 and March 1, 2014.

As of March 2, the claimant may be eligible to receive benefits since she filed weekly claims, but did not work or earn any wages these weeks. But each week a claimant files a claim for benefits, she must demonstrate that she is able to and available for work. Iowa Code § 96.4(3).

The facts indicate that on February 3 the claimant agreed to go to the work place each Friday to find out what hours she could potentially work the following week. The claimant did this the first week or the week ending February 8. Even though the claimant only lives down the street from

work, she has not gone to the work place to find out what hours she could work the following week. The reason the claimant indicated she did not do this was because the employer was also supposed to call her with available hours and did not. The evidence indicates that when the employer has contacted the claimant, she either is not available or does not timely respond. The claimant has effectively unduly limited her availability to work by failing to go to the workplace on Fridays to find out what hours the employer has available for her to work the next week. As long as the claimant remains an on-call employee, she must demonstrate that she is available for work and take reasonable steps to work hours the employer may have available for her to work.

As of March 2, the claimant is potentially eligible to receive benefits, but until she reopens her claim and establishes her availability to work, she is not eligible to receive benefits as of March 2, 2014.

DECISION:

The representative's March 3, 2014 determination (reference 01) is modified in the claimant's favor. As of February 3, the employer changed the claimant's employment from part time to on-call. As a result of this change, the claimant is not working part time and her workweek has been potentially reduced. As of February 2, the claimant is potentially eligible to receive benefits for any week she earns \$173.00 or less and is able to and available for work.

Since the claimant earned more than \$173.00 for the week ending February 8, she is not eligible to receive benefits this week. Based on a March 3 determination (reference 02) the claimant is not eligible to receive benefits for the weeks ending February 15, 22, and March 1, 2014.

As of March 2, 2014, the claimant is not eligible to receive benefits because she has unduly limited her ability to and availability for work by failing to go to the workplace on Fridays to find out what hours she could work the next week. The claimant must take reasonable steps to work hours the employer may have open and as of the date of the hearing she has not taken these necessary steps.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css