

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JANICE K ASK
Claimant

APPEAL NO. 07A-UI-03967-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SPHERIS
Employer

**OC: 02-25-07 R: 02
Claimant: Appellant (2)**

Section 96.4-3 - Able and Available
871 IAC 24.23(26) – Same Hours and Wages
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.7(2)a – Same Base Period Employment

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 13, 2007, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on May 3, 2007. The claimant did participate. The employer did not participate.

ISSUE:

Is the claimant able to and available for work or is she partially unemployed?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a medical transcriptions part time beginning December 18, 2006 through date of hearing as she remains employed.

When the claimant started working she was working 37 hours per week. She had trouble keeping up with the work demands and meeting the production expectations. She spoke with her mentor in an attempt to find a way that she could meet productions standards. The claimant suggest that she work part time, believing that she could be assigned less work, but still have 37 hours per week to work and complete the assigned work. The claimant believed that by going part time she would still be allowed to work up to 37 hours per week, but that she would have a reduced work load. The claimant did not intend to work only 20 hours per week.

After speaking with her mentor and beginning the new part time schedule, the claimant learned that the employer would not allow her to work anymore than 20 hours per week. The claimant thought that even though she was working part time she would still be allowed to work her normal 37 hours per week.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work.

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".

871 IAC 24.23(26) provides:

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

(26) 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.

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.

While the administrative law judge is puzzled about how the claimant could believe that she could perform less work, but still be paid for the same amount of hours worked, the claimant has established that she did not intentionally seek to reduce her work hours. Since the employer is not allowing the claimant to work anymore than 20 hours per week the claimant is considered partially unemployed. Benefits may be allowed based upon reporting of weekly earnings. For whatever period the employer is not offering the same wages and hours as contemplated in the contract of hire, that is at least 37 hours per week, it may be liable for benefit charges to its account. Accordingly, benefits are allowed.

DECISION:

The April 13, 2007 reference 02 decision is reversed. The claimant is partially unemployed and benefits are allowed, provided she is otherwise eligible. The account of employer may be liable for charges.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs