

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

CHERYL L NEWSOM
Claimant

APPEAL NO. 15A-UI-05645-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DOLGENCORP LLC
DOLLAR GENERAL
Employer

OC: 04/05/15
Claimant: Appellant (2)

Section 96.4-3 – Still Employed at Same Hours and Wages

STATEMENT OF THE CASE:

The claimant appealed a representative's decision dated May 5, 2015, reference 01, which held the claimant not eligible for benefits effective April 5, 2015 upon finding that the claimant was employed at the same hours and wages as in the original contract of hire and therefore could not be considered to be partially unemployed. After due notice was provided, a telephone conference hearing was scheduled for and held on June 23, 2015. The claimant participated personally. Although duly notified, the employer did not participate.

ISSUE:

The issue in this matter is whether the claimant is still employed part time at the same hours and wages as in the original agreement of hire.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: That Cheryl Newsom began her employment with Dolgencorp LLC on April 4, 2014 and continues to be employed at the time of hearing. Ms. Newsom was hired to work part time as a sales associate and was guaranteed 20 or more hours of part-time work each week by Linda Graham, the store manager. Ms. Newsom was hired at the rate of \$7.45 per hour.

In March 2015, the claimant's rate of pay per hour was increased to \$8.25 per hour. The claimant's working hours, however, were dropped below 20 hours per week. In spite of repeated requests to have her hours increased, no additional working hours were scheduled for Ms. Newsom and she continued to be employed working less than 20 hours per week, although she was guaranteed a minimum 20 hours each week at the time of hire.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that Ms. Newsom is still employed at a part-time job at the same hours and wages as contemplated in the original agreement of hire. It does not.

Iowa Admin. Code r. 871-24.23(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.

The evidence in the record establishes, that although Ms. Newsom was hired in a part-time capacity she was guaranteed 20 or more hours of part-time work each week when she was hired by the store manager, Linda Graham. The claimant was hired to be paid by the hour and continues to be paid by the hour at a greater rate than she was given at the time of hire. Although the claimant was guaranteed that she would be given at least 20 hours of part-time work each week, the claimant's working hours were unilaterally reduced by the employer below the guaranteed number of 20 hours of part-time work each week.

For these reasons the administrative law judge concludes that the claimant is eligible to receive partial unemployment insurance benefits for the weeks that she has been scheduled to work less than 20 hours per week and has complied with all other eligibility requirements of the Iowa Employment Security Law. The employer has changed the agreement of hire and, therefore, eligible the weeks where Ms. Newsom is scheduled to work less than 20 hours per week and given as agreed upon at the time of hire. The claimant is eligible to receive partial unemployment insurance benefits effective May 5, 2015, providing that she is otherwise eligible.

DECISION:

The representative's decision dated May 5, 2015, reference 01, is reversed. Partial unemployment insurance benefits are allowed as of April 5, 2015. The claimant is still employed part time, however, her working hours have been reduced below the guaranteed minimum of 20 hours per week by this employer. The claimant is eligible to receive partial unemployment insurance benefits, providing that she is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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