

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

CAROLYN L FLO
Claimant

APPEAL NO. 19A-UI-05249-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TIMELY MISSON NURSING HOME
Employer

OC: 05/26/19
Claimant: Respondent (2R)

Iowa Code § 96.4(3) – Able and Available
871 IAC 24.23(26) – Part-Time Worker – Able and Available

STATEMENT OF THE CASE:

Timely Mission Nursing Home (employer) appealed a representative's June 26, 2019, decision (reference 01) that concluded Carolyn Flo (claimant) was eligible to receive unemployment insurance benefits as of May 26, 2019. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 25, 2019. The claimant participated personally. The employer participated by Erin Silber, Human Resources Assistant. The administrative law judge took official notice of the administrative record.

ISSUE:

The issue is whether the claimant is able and available for work. .

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on May 16, 2016, as a full-time employee. At the end of her employment she was a full-time laundry supervisor.

In November 2017, the claimant returned from medical leave and the employer reduced her hours to approximately twenty-eight per week due to low census. The claimant wanted more hours but accepted the change in her verbal working contract. The claimant worked approximately twenty-eight hours per week until the end of her employment on July 21, 2019. She averaged 28.33 hours per week for the second quarter of 2019. The claimant started another job on July 8, 2019, and stopped filing for unemployment insurance benefits after the week ending July 6, 2019.

She filed her claim for unemployment insurance benefits with an effective date of May 26, 2019. The claimant's base period of employment is from the first quarter of 2018, to the fourth quarter of 2018. The only wages in the claimant's base period are part-time wages from the employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant is not eligible to receive unemployment insurance benefits.

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 claimant was hired as a part-time worker in November 2017. The claimant did not have a change in her work status when she filed for unemployment insurance benefits on May 26, 2019. Her change in work status occurred in November 2017. The claimant acquiesced to the change in status in November 2017. She agreed to the reduction by working part-time hours starting in November 2017. After the acceptance of part-time work in November 2017, the claimant's hours never changed.

As of May 26, 2019, the claimant was still working in her part-time job and did not have a reduction of hours. On May 26, 2019, she was working the same hours she accepted in November 2017. The claimant is disqualified for being unavailable for work.

The issue of the claimant's overpayment of unemployment insurance benefits is remanded for determination.

DECISION:

The representative's June 26, 2019, decision (reference 01) is reversed. The claimant is disqualified for being unavailable for work. She is not eligible to receive unemployment insurance benefits as of May 26, 2019.

The issue of the claimant's overpayment of unemployment insurance benefits is remanded for determination.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs