

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PEGGY L PINKERTON-DEMPSEY
Claimant

APPEAL NO. 09A-UI-15807-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

GLEN HAVE HOME
Employer

OC: 08/30/09
Claimant: Appellant (1)

Section 96.19-38-b –Eligibility for Partial Unemployment Insurance Benefits
Section 96.4-3 –Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated October 13, 2009, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on November 24, 2009. Claimant participated. Employer participated by Jennifer Nichols, director of nursing. The record consists of the testimony of Peggy Pinkerton-Dempsey and the testimony of Jennifer Nichols.

ISSUE:

Whether the claimant is eligible for partial unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant is employed as a certified nursing assistant by the employer. When the claimant started working for the employer in March 2008, she was considered to be a prn employee. The claimant was going to school full time and at the time of this hearing she was still a full time student. The claimant would pick up shifts when she was able to do so around her school schedule. In either January or February 2009, the claimant asked if she could be part of the employer's retirement plan. PRN employees could not participate in the retirement plan and so the claimant's hours were more regularly scheduled. The claimant was still going to school and there had to be frequent adjustments to the schedule if the claimant had a conflict with school or family.

In the summer of 2009, the claimant was able to sign up for more shifts because she was not attending classes. She started school again in late August and she could not pick up extra shifts as she had done during the summer. The claimant had also received her LPN license and wanted to work as an LPN instead of a CNA. Ms. Nichols, director of nursing, told the claimant that she did not have any hours available for an LPN, but that there were hours the

claimant could work as a CNA. The claimant did not sign up for these hours even though they were posted. In addition, members of the staff would contact the claimant about working and the claimant declined, citing school and family responsibilities. She is going to work one or perhaps two shifts the week of November 23, 2009.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides that a claimant is deemed partially unemployed if she is not employed at her usual hours and wages and earns less than her weekly benefit amount plus \$15.00 in other employment. Iowa Code section 96.19-38-b.

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 claimant has the burden of proof on elements of basic eligibility. See Iowa Code section 96.6-2. The first element of eligibility is that the individual must be unemployed. Unemployment may be either total or partial. See Iowa Code section 96.19-38. One who is working fewer than the individual's regular hours and earning less than the individual's weekly benefit amount plus \$15.00 may be considered partially unemployed. The evidence in this record established that the claimant has never been promised any specific number of hours and that her hours have varied throughout her employment depending upon her availability. The claimant is a full time student and would work around her school schedule. The employer has made hours available to the claimant, but she has declined to work those hours.

The administrative law judge concludes that the claimant has not shown that she is partially unemployed. Work has been available to the claimant but she has not accepted it. Accordingly, benefits are denied.

DECISION:

The decision of the representative dated October 13, 2009, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs