

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHERRY L BENNETT**  
Claimant

**APPEAL NO. 09A-UI-16949-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE RESTAURANT CO  
PERKINS RESTAURANT & BAKERY**  
Employer

**OC: 09/20/09  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

In the case Sherry Bennett filed a timely appeal from a representative's decision dated October 28, 2009, reference 01, which denied benefits finding the claimant was still employed at the same hours and wages as the original agreement of hire and therefore could not be considered partially unemployed. After due notice, a telephone conference hearing was scheduled for and held on December 16, 2009. The claimant participated personally. The employer participated by Mr. Jeramey Beem, Assistant Manager.

**ISSUE:**

At issue is whether the claimant is eligible to receive partial unemployment or employed at the same hours and wages as the original agreement of hire.

**FINDINGS OF FACT:**

The administrative law judge having considered the evidence in the record, finds: Sherry Bennett began employment with Perkins Restaurant & Bakery most recently in November of 2006. Ms. Bennett was hired to work as a part-time server and was paid by the hour. As a part-time employee the claimant was not guaranteed any minimum number of working hours per week. The claimant continues to be employed at the time of hearing in the same capacity working the same hours under the same agreement of hire.

Under established company policy part-time employees are not guaranteed any minimum number of working hours each week. Employees are informed of their part-time status at the time of hire.

Ms. Bennett's working hours were fewer beginning in August of 2008 and were further reduced in May of 2009. The claimant had been absent on a number of occasions due to an ongoing medical problem and hours that normally would have been assigned to Ms. Bennett were given to other workers based upon the claimant's unavailability at times. Ms. Bennett desires to work daytime hours so that she can utilize public transportation at a reasonable cost. Ms. Bennett

does not wish to work evening or night hours as public bus transportation is not available and the claimant feels that she cannot afford taxis fare.

The claimant believed at the time of hire that she would be working 30 or more hours per week and was aware that she was being hired in a "part-time" status.

**REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes that the claimant is working part-time hours and being paid at wages different than contemplated in the original agreement of hire. It does not.

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.

The evidence in the record establishes that all ten employees at Perkins Restaurant & Bakery are hired with no guarantee as to the minimum hours of work that they will receive each week as part-time employees. The claimant did not bring her belief that she had been hired with the guarantee of 30 hours or more per week to the attention of company management for an extended period although her working hours fluctuated and at times were below 30 hours per week.

The evidence in the record also establishes that Ms. Bennett was not able to work all of the part-time hours available to her due to her choice of shifts due to transportation problems and because the claimant had often been absent due to illness.

The parties do not dispute that Ms. Bennett is still employed by Perkins Restaurant & Bakery and the administrative law judge finds that the claimant is still employed under the terms and conditions as originally hired. Inasmuch as she was not guaranteed any minimum number of hours, the fact that she is working fewer hours than she would like does not render her partially unemployed. When an individual is working in a part-time job under the same terms and conditions as hired, he or she is not considered partially unemployed. 871 IAC 24.23(26).

**DECISION:**

The representative's decision dated October 28, 2009, reference 01, is hereby affirmed. Ms. Bennett is not partially unemployed within the meaning of the law as she is still employed by Perkins Restaurant & Bakery in a part-time job under the same terms and conditions as hired.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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