

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIELLE R NILLES

Claimant

APPEAL NO. 09A-UI-11333-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TRI-STATE NURSING ENTERPRISES INC

Employer

OC: 06/21/09

Claimant: Appellant (2)

871 IAC 24.1(113)a – Layoff
Section 96.7-2-a(2) – Charges to Employer's Account

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated July 31, 2009, reference 01, that concluded she was working the same hours and wages as in her original contract of hire and could not be considered partially unemployed. A telephone hearing was held on August 24, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing. Janelle Townsend participated in the hearing on behalf of the employer. Exhibits One and A were admitted into evidence at the hearing.

ISSUE:

Was the claimant laid off due to lack of work?

Was the claimant working the same hours and wages as her original contract of hire?

FINDINGS OF FACT:

The employer is a medical staffing service that provides workers to client businesses on a temporary or indefinite basis. When the claimant was hired, the person who hired her said she would be getting over 30 hour of work per week.

The claimant worked as a certified nursing assistant (CNA) for the employer from November 2007 to May 17, 2009. She worked regularly every week until December 2008, when the employer's need for CNAs was reduced. She only worked five shifts in April 2009 and one shift in May 2009 on May 17, 2009. She completed the work assignment on May 17, 2009. The claimant kept in regular contact with the employer after May 17, 2009.

The claimant filed a new claim for unemployment benefits with an effective date of June 21, 2009, because the employer was not providing work for the claimant as it had in the past. The employer has not had offered the claimant any work since she applied for benefits. The claimant has been able to and available for work.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer, who are discharged for work-connected misconduct, or who fail to accept an offer of suitable work. Iowa Code section 96.5-1, 96.5-2-a, 96.5-3. Claimant are only disqualified under the failure to accept suitable work statute based on offers made after the effective date of the claim. 871 IAC 24.24(8). The evidence establishes the employer was providing the claimant with regular work assignments each week until December 2008. The work then became more irregular. The claimant completed the last assignment offered to her. She waited some time to see if the work would pick up, and only filed for benefits after weeks of not getting any work. She would be considered laid off due to lack of available work under 871 IAC 24.1(113)a.

The Agency disqualified the claimant based on 871 IAC 24.23(26), which states that where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract of hire and is not working reduced hours different than the contract of hire, the claimant cannot be considered partially unemployed. This rule does not apply here because the claimant was totally unemployed when she filed for unemployment benefits during the week of June 21, 2009, and had not worked since May 17, 2009.

Iowa Code section 96.7-2-a(2) provides that the amount of benefits paid to an eligible individual shall be charged against the account of the employers in the base period unless the individual is still employed by a base period employer at the time the individual is receiving the benefits and is receiving the same employment from the employer that the individual received during the individual's base period or the individual has been discharged for work-connected misconduct or voluntarily quit employment without good cause attributable to the employer or refused suitable work without good cause.

The employer's account shall be charged for benefits paid to the claimant since because it was not providing the same regular employment as provided in the base period.

DECISION:

The unemployment insurance decision dated July 31, 2009, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs