

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MAKENZIE A SIMONS
Claimant

BETHANY MANOR INC
Employer

APPEAL 17A-UI-05750-JCT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/30/17
Claimant: Respondent (2r)

Iowa Code § 96.4(3) – Ability to and Availability for Work

Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

Iowa Code § 96.19(38) b - Eligibility for Partial Unemployment Insurance Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated May 25, 2017, reference 01, that concluded the claimant was eligible to receive partial unemployment insurance benefits and the employer's account was chargeable for benefits paid to the claimant since her hours had been reduced. A telephone hearing was held on June 27, 2017. The parties were properly notified about the hearing. The claimant did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing. The employer participated by way of Shannon Andersen, director of human resources. Employer Exhibits One through Fourteen were admitted into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Does the claimant meet the definition of being considered partially unemployed?
Is the claimant able to and available for work?

FINDINGS OF FACT:

The claimant was hired as a homemaker, working full-time, beginning September 1, 2016. She has worked both full time and part time for the employer based on her availability to work. During that time, the claimant primarily worked shifts between 7:00 a.m. to 7:00 p.m. The claimant was promoted to a CNA effective March 23, 2017 and accepted the promotion, which came with a \$2 per hour pay raise.

Given the change of title, the claimant joined a different scheduling roster. The employer's scheduling is based on business needs, worker availability, and seniority. The claimant was made aware at the time she accepted the promotion that her shift of 7:00 a.m. to 7:00 p.m.

would not transfer over as a CNA. Rather, the claimant would be assigned shifts based on seniority, and could wait for her preferred shift. If the claimant did not want to work full-time as a CNA at the shift offered to her, she could elect to remain as a homemaker on her old schedule and pick up CNA shifts, when available until she moved to the top of the seniority list to accept the shift she preferred. No evidence was presented that the claimant was guaranteed or informed she could keep her old homemaker shift hours.

There were three shifts available to CNAs, including 6:00 a.m. to 2:00 p.m., 2:00 p.m. to 10:00 p.m. and 10:00 p.m. to 6:00 a.m. The claimant wanted the day shift but no position was available. Three different managers explained to the claimant the scheduling system but the claimant refused stating on June 16, 2016, that she would not use her CNA status (which was paid for by the employer) until she got the shift assigned that she wanted. As a result of the claimant's refusal to work her assigned shift (which was not the day shift), or to move into the homemaker position and pick up CNA shifts as she wanted, she was moved to an on-call status.

The claimant filed a new claim for unemployment insurance benefits with an effective date of April 30, 2017, after being moved to an on-call status, until she accepted a shift as a CNA or returned to a homemaker.

The claimant worked 16 hours for the week ending May 6, 2017 and 24 hours for the week ending June 10, 2017. Otherwise, the claimant has worked between 33 and 42 hours per week based upon her selecting her shifts. Since moving to an on-call status, where she picks up available shifts, she has been working the 2:00 to 10:00 p.m. shifts and 10:00 p.m. to 6:00 a.m. shifts, which were the exact same shifts she would have been guaranteed and assigned as a full-time CNA.

The employer has full-time work available and guaranteed if the claimant is willing to accept a full-time, assigned position as CNA. At the present time however, the claimant has refused to work shifts as she waits for her desired shift.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was eligible for partial unemployment insurance benefits effective April 30, 2017

Iowa Code § 96.3-3 provides:

3. Partial unemployment. An individual who is partially unemployed in any week as defined in section 96.19, subsection 38, paragraph "b", and who meets the conditions of eligibility for benefits shall be paid with respect to that week an amount equal to the individual's weekly benefit amount less that part of wages payable to the individual with respect to that week in excess of one-fourth of the individual's weekly benefit amount. The benefits shall be rounded to the lower multiple of one dollar.

Iowa Code §96.19-38-b provides in part:

- b. An individual shall be deemed partially unemployed in any week in which, while employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

871 IAC 24.23(16) provides that a claimant is disqualified for being unavailable for work: "Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available."

The claimant is not qualified for unemployment benefits during any of the weeks in question. First, the claimant's reduction from full-time to on-call status was based on her own refusal to accept her shift, and not based upon on any reduction in hours by the employer. Second, the credible evidence does not support that any reduction in hours is attributed to the employer's refusal to honor an agreement or promise that when she moved from homemaker into the promotion of CNA, that she would be guaranteed her same shift. The claimant did not attend the hearing and did not refute the credible evidence presented by the employer. The claimant has restricted her availability (and stability of hours) by refusing to work the permissible shifts as a full-time CNA and electing to work shifts as she chooses, while she waits to move up in seniority and be offered a desired day shift.

The Iowa Employment Security Act was established with the clearly stated intent that unemployment reserves be used "for the benefit of persons unemployed through no fault of their own." Iowa Code § 96.2. Based on the evidence presented, the administrative law judge concludes that the claimant's restrictions on the number of hours and when she will work has created the situation where she is receiving less hours and wages than during the base period. This is not a situation where when the employer has reduced the claimant's scheduled hours. Therefore, the administrative law judge concludes that the claimant is not partially unemployed. The claimant does not meet the availability requirements because she has restricted her hours and not willing to work during the hours in which suitable work for the claimant is available. Benefits must be denied.

DECISION:

The unemployment insurance decision dated May 25, 2017 (Reference 01), is reversed. The claimant is not partially unemployment. The claimant is not able to and available for work because she has restricted her hours and not willing to work during the hours in which suitable work is available to her. The claimant is ineligible to receive unemployment insurance benefits effective April 30, 2017.

REMAND: The matter of determining if the claimant has been overpaid benefits is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn