

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**VICKI L DRISCOLL**  
Claimant

**APPEAL NO. 13A-UI-07935-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GENESIS HEALTH SYSTEM  
THOMAS & THORNGREN**  
Employer

**OC: 05/26/13  
Claimant: Respondent (1)**

Section 96.4-3 – Still Employed Same Hours & Wages

**STATEMENT OF THE CASE:**

Genesis Health System filed a timely appeal from a representative's decision dated June 25, 2013, reference 03, which held claimant eligible to receive benefits effective May 26, 2013 upon a finding the claimant was still employed working part-time or on-call but performing services not in the same pattern of employment as in the base period. After due notice, a telephone hearing was held on August 13, 2013. Although duly notified, the claimant did not participate. The employer participated by Ms. Megan Clark, Human Resource Generalist.

**ISSUE:**

The issue in this matter is whether claimant is still employed part time in the same hours and wages as in the original agreement of hire.

**FINDINGS OF FACT:**

Vicki Driscoll was hired by Genesis Health System on January 7, 2013 to work as a part-time, certified nursing assistant. Claimant was hired to work a minimum of 32 hours per week and was paid by the hour.

Although the claimant was hired to work 32 hours per week for this employer, at times that minimum number of working hours is not available to Ms. Driscoll due to low census at the employer's facilities. It appears that Ms. Driscoll has been available to take all hours offered by the employer but on some weeks the employer is unable to offer the claimant a minimum of 32 working hours as agreed and at those times the claimant claims partial unemployment insurance benefits. During the initial period of employment with this employer the claimant had been given the 32 hours per week as agreed at time of hire but subsequently due to business conditions the employer has not always been able to offer the claimant the number of hours agreed upon at hire for her part-time employment.

The employer has been instructed that if there are any weeks in which the claimant's working hours are less than 32 hours because of the claimant's choice not to accept assignments that were available to her, the employer should notify Iowa Workforce to protest any claim for benefits by the claimant that week.

**REASONING AND CONCLUSIONS OF LAW:**

The question is whether the evidence in the record establishes that Ms. Driscoll is still employed in her part-time job at the same hours and wages contemplated in the original contract of hire. It does not.

The evidence in the record establishes that at the time of hire it was agreed that Ms. Driscoll would receive a minimum of 32 hours of work per week as a part-time CNA but that subsequently the claimant was working on a reduced workload on some weeks different from the contract of hire and not performing services in the same pattern of employment as in the base period.

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.

For the above-stated reasons the administrative law judge concludes the claimant can be considered to be partially unemployed for weeks that she is not offered a minimum number of 32 hours of work per week by this employer and does not refuse any call in to work for personal reasons. As there has been a change in the number of working hours that is available to the claimant at times different from the original agreement of hire and the hours that the claimant had worked in the base period, claimant may be eligible to receive partial unemployment insurance benefits, providing that she has met all other eligibility requirements of Iowa law.

**DECISION:**

The representative's decision dated June 25, 2013, reference 03, is affirmed. Claimant is eligible to receive partial unemployment insurance benefits effective May 26, 2013. Although claimant continues to remain employed, she is not performing services in the same pattern as agreed upon at the time of hire and in the claimant's base period. Claimant is eligible to receive partial unemployment insurance benefits for weeks that she has properly claimed benefits and been offered less than 32 hours of work per week and the claimant meets all other eligibility requirements of the law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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