

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARY E WRIGHT
Claimant

APPEAL NO. 09A-UI-18956-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HOSPICE WITH HEART INC
Employer

OC: 11/15/09
Claimant: Appellant (2)

Section 96.4-3 - Able to and Available for Work
Section 96.5-1 - Voluntary Quit
Section 96.5-3-a - Failure to Accept Suitable Work

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated December 11, 2009, reference 01, that concluded she was unavailable for work. A telephone hearing was held on January 28, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing. Dawn Stane participated in the hearing on behalf of the employer. Exhibits A and One through Five were admitted into evidence at the hearing. The parties agreed that the issues of whether the claimant voluntarily quit employment without good cause attributable to the employer and whether she failed to accept suitable work without good cause could be considered at the hearing.

ISSUES:

Was the claimant able to and available for work?

Did the claimant voluntarily quit employment without good cause attributable to the employer?

Did the claimant fail to accept an offer of suitable work without good cause?

FINDINGS OF FACT:

The claimant worked part time as a home/facility hospice aide starting in August 2008. When she was hired, she stated that she was available to work from Monday to Friday, 8:00 a.m. to 4:30 p.m. The claimant was also willing to work nights and weekends as needed. Her rate of pay was \$10.51 per hour.

Based on this availability, the claimant worked an average of 24.3 hours per week from December 15, 2008, to November 1, 2009.

Starting in November 2009, the claimant's hours were substantially reduced due to lack of clients. For the two-week pay period from November 2 to 15, the employer provided the claimant 14.25 hours of work. For the two-week pay period from November 16 to 29, she had

8.75 hours of work. For the two-week pay period from November 30 to December 13, she had 24.75 hours of work (including 4 hours of sick and 4 hours of vacation pay). For the two-week pay period from December 16 to 27, she had 24.78 hours (including 5.28 hours of vacation pay).

As a result of the reduction in the claimant's hours, she filed a new claim for unemployment insurance benefits with an effective date of November 15, 2009. Her weekly benefit amount is \$154.00. Her earning limit is \$169.00

The claimant's wages were less than her earnings limit during the weeks ending November 21, November 28, and December 5.

On November 28, the employer sent a letter to the claimant offering her three overnight shifts per week (12 hours per shift) and every third weekend. The rate of pay was not listed on the offer. The claimant was told to contact the employer if she was interested. The claimant was not interested because overnight work was not what she hired for.

On December 4, the claimant notified the employer that she was quitting employment effective December 18. She quit employment due to the substantial reduction in hours that occurred starting in November 2009. She had repeatedly requested more hours from the employer.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant was eligible for partial unemployment insurance benefits effective November 15, 2009. The claimant filed a claim requesting partial unemployment insurance benefits for the weeks in which her earnings were less than her earnings limit of \$169.00.

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.

The preponderance of the evidence establishes the claimant's regular workweek at the point she filed her claim was about 24 hours per week. She was working less than that regular workweek due to a reduction in hours effective November 15, 2009, and she was entitled to partial unemployment insurance benefits since her earnings were less than her weekly benefit amount plus \$15.00.

The unemployment insurance law provides that an individual be able to and available for work. Iowa Code § 96.4-3. The claimant was able to and available to work and continued to available

for work for the hours she stated she was available for work when she was hired. The fact that she was not willing a to work an overnight shift does not make her unavailable for work.

The next issue in this case is whether the claimant is subject to disqualification for failing to accept an offer of suitable work on November 24, 2009, without good cause under Iowa Code § 96.5-3-a. Under the unemployment rules, a valid offer of work either need to be made personally or by registered letter. 871 IAC 24.24(1)a. The claimant is, therefore, not subject to disqualification for failing to accept the offer of work on November 24. In addition, the claimant had good cause to decline the work because the hours were substantially different that what she had been working.

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer. Iowa Code § 96.5-1. The claimant had good cause attributable to the employer for leaving employment due to the substantial reduction in her hours of work.

The issue is whether the employer's account is subject to charge for benefits paid to the claimant.

Iowa Code § 96.7-2-a(2) provides in part:

(2) The amount of regular benefits . . . paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer.

The employer's account is subject to charge for benefits because the employer did not provide the claimant with the same employment as provided during the base period.

DECISION:

The unemployment insurance decision dated December 11, 2009, reference 01, is reversed. The claimant was available for work. She is not subject to a refusal of work disqualification. She quit employment with good cause. 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/css