

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STACEY MESSERSMITH
Claimant

APPEAL NO: 14A-UI-05245-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

RGIS LLC
Employer

OC: 10/27/13
Claimant: Appellant (2)

Section 96.4-3 – Able and Available for Work
Section 96.4-3 – Same Hours and Wages

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 12, 2014, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on June 17, 2014. The claimant participated in the hearing. The employer did not respond to the hearing notice by providing a phone number where it could be reached at the date and time of the hearing as evidenced by the absence of a name and phone number on the Clear2There screen showing whether the parties have called in for the hearing as instructed by the hearing notice. The employer did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

ISSUE:

The issue is whether the claimant is still employed with the employer for the same hours and wages as contemplated in the original contract of hire.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was hired as a part-time inventory supervisor for RGIS in June 1996. She was previously a full-time manager and then became an hourly supervisor in approximately 2007. She is considered to be a part-time employee but usually works between 30 and 40 hours per week.

The week ending April 19, 2014, the claimant worked 12.05 hours; the week ending April 26, 2014, the claimant worked 10.15 hours, the week ending May 3, 2014, the claimant worked 56.00 hours; the week ending May 10, 2014, the claimant worked 28.00 hours; the week ending May 17, 2014, the claimant worked 39.00 hours; the week ending May 24, 2014, the claimant worked 57.00 hours; the week ending May 31, 2014, the claimant worked 34.00 hours; the week ending June 7, 2014, the claimant worked 38.00 hours; and the week ending June 14, 2014, the claimant worked 55.00 hours.

The claimant claimed benefits for the three weeks ending May 3, 2014.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not working the same hours as contemplated in the original contract of hire and is eligible for partial unemployment insurance benefits.

Iowa Code § 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.23(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 claimant worked 12.05 hours the week ending April 19 and 10.15 hours the week ending April 26, 2014, which was a significant reduction in her workweek based on the hours she usually works per week for the employer and as contemplated in the original contract of hire. Consequently, partial benefits are allowed, provided she is otherwise eligible.

DECISION:

The May 12, 2014, reference 01, decision is reversed. The claimant is not employed at the same hours and wages as in her original contract of hire and therefore is qualified for partial benefits, provided she is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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