

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STACIE L KNOX
Claimant

APPEAL NO. 12A-UI-14855-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RGIS LLC
Employer

OC: 11/04/12
Claimant: Appellant (1)

Section 96.4-3 – Still Employed at Same Hours and Wages

STATEMENT OF THE CASE:

The claimant appealed a representative's decision dated December 13, 2012, reference 01, which denied benefits effective November 4, 2012 finding that the claimant was still employed at the same hours and wages as in the original agreement of hire and therefore could not be considered to be partially unemployed. After due notice was provided, a telephone hearing was held on January 23, 2013. The claimant participated. Although duly notified, the employer did not participate.

ISSUE:

The issue is whether the claimant is still employed at the same hours and wages as in the original agreement of hire.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Stacie Knox began employment with RGIS LLC on December 20, 2010. Ms. Knox was hired to work as a part-time inventory taker and was paid \$8.50 per hour. Ms. Knox was informed at the time of hire that there was no guarantee as to the minimum number of hours per week as a part-time employee.

At the time of hearing Ms. Knox continues to be employed part time by RGIS LLC. The claimant continues to be paid by the hour at a higher rate than she was hired at. The company is in the business of providing inventory to companies and the claimant's work level varies considerably from week to week depending upon business needs and the seasonal nature of the employer's work. Many employers do not have inventory taken during the holiday period and the claimant's working hours have been substantially reduced because of lack of business volume.

Although Ms. Knox agrees that she was hired with no guarantee as to the minimum number of hours that she would be assigned each week, it is the claimant's position that due to the drastic reduction in business that she should be eligible for partial unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Knox is still employed as a part-time employee at the same hours and wages as contemplated in the original agreement of hire. It does.

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.

The evidence in the record establishes that Ms. Knox was hired in a part-time capacity with no guarantee as to the minimum number of hours she would be assigned each week. The claimant was also hired to be paid by the hour and continues to be paid by the hour at the same or greater rate than at the time of hire. As a part-time employee the claimant's hours have fluctuated due to business needs and because client companies often do not require the services of the inventory taking employer company during the holiday season. The claimant continues to be employed part time working no guarantee of minimum hours at the time of hearing.

For the above-stated reason the administrative law judge concludes that the claimant cannot be considered to be partially unemployed as she is still employed part time at the same hours and wages as contemplated in the original agreement of hire. There was no guarantee as to the minimum number of hours the claimant would be assigned each week and there has been no change in that agreement of hire. The claimant's reduced workweeks are therefore no different than agreed upon by the parties. Benefits are therefore denied as of November 4, 2012.

DECISION:

The representative's decision dated December 13, 2012, reference 01, is affirmed. The claimant cannot be considered to be partial unemployed. Benefits are denied as of November 4, 2012. The claimant is still employed part time, working at the same hours and wages as contemplated in the original agreement of hire.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

css/css