

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAUREN C SHEAR
Claimant

APPEAL NO. 14A-UI-03205-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SIOUX VALLEY MEMORIAL HOSPITAL
Employer

OC: 02/23/14
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated March 14, 2014, reference 01, that concluded the claimant was not eligible to receive unemployment insurance benefits because she was still employed in her on-call job in the same capacity as her agreement of hire. After due notice was provided, a telephone hearing was held on April 16, 2014. The claimant participated. The employer participated by Ms. Theresa Conley, Human Resource Manager.

ISSUE:

The issue is whether the claimant is disqualified for being unavailable for work.

FINDINGS OF FACT:

The administrative law judge having heard the testimony and considered all of the evidence in the record, finds: That the claimant was hired on July 17, 2007 as a part-time nurse's aide working 32 to 36 hours per week. Subsequently, Ms. Shear was hired to assume additional duties as a public health secretary. The claimant then worked 40 hours per week in combination with her nursing aide duties. At a later date Ms. Shear requested to leave the nurse aide/home health part-time position and began working prn (as needed) in the secretarial position. The claimant remains as an on-call employee for Sioux Valley Memorial Hospital at the time of hearing.

It is the claimant's position that when she was placed on an on-call (prn) status as a public health secretary, she desired to work at least 16 hours per week but nonetheless accepted the on-call/as-needed status offered by the employer. Subsequently, Ms. Shear has begun other part-time employment for the school district as a substitute and most recently has worked as a classroom aide for Head Start at school district, also continuing her as-needed status with the Sioux Valley Memorial Hospital.

REASONING AND CONCLUSIONS OF LAW:

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 question before the administrative law judge is whether the evidence in the record establishes that the claimant accepted and agreed to be employed in an on-call status with Sioux Valley Memorial Hospital and whether the claimant remains in that status since the agreement. It does.

The evidence in the record clearly establishes that the claimant initially was hired as a part-time worker but later accepted full-time work with Sioux Valley Memorial Hospital. The evidence also establishes that the claimant later left the nurse aide portion of her employment with the hospital and at that time the claimant was offered and accepted on-call work in the public health secretary position. The claimant did not quit her job when offered the on-call position, but agreed to it by remaining employed in that capacity for a substantial period of time before claiming partial unemployment insurance benefits on February 23, 2014. As an on-call employee the claimant's hours have fluctuated due to the hospital's business needs and because of Ms. Shear's availability to accept hours that are offered at times. The claimant continues to be employed in an on-call capacity working with no guarantee of minimum hours and is paid at the same or greater of pay as agreed upon at the time she accepted on-call employment with Sioux Valley Memorial Hospital.

For the above-stated reasons the administrative law judge concludes that the claimant cannot be considered to be partially unemployed as she is still employed on call at the same hours and wages contemplated in the agreement contemplated by the parties at the time that Ms. Shear accepted on-call employment with the hospital. As there was no guarantee of the minimum number of hours the claimant would be assigned each week, there has been change in the agreement of hire. The claimant's reduced work weeks are therefore no different than agreed upon by the parties. Benefits are denied as of February 23, 2014.

DECISION:

The representative's decision dated March 14, 2014, reference 01, is affirmed. The claimant cannot be considered to be partially unemployed. Benefits are denied as of February 23, 2014. The claimant is still employed on call at the same hours and wages as contemplated in the agreement between the parties.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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