

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ELIZABETH A LINSOTT**  
Claimant

**APPEAL NO. 12A-UI-15225-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CHILDSERVE COMMUNITY OPTIONS INC**  
Employer

**OC: 11/25/12  
Claimant: Appellant (1)**

Section 96.4-3 – Able and Available for Work  
Section 96.4-3 – Still Employed Same Hour and Wages

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from the representative's decision dated December 20, 2012, reference 01, which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on January 30, 2013. The claimant participated personally. The employer participated by Ms. Karla Gumpert and Ms. Jamie McQuillen-Denge. Employer's Exhibits One, Two and Three were received into evidence.

**ISSUE:**

At issue in this matter is whether the claimant is still employed part time at the same hours and wages as agreed. .

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony and having considered the evidence in the record, finds: Elizabeth Linscott began employed with Childserve Community Options Inc. on August 22, 2011. Ms. Linscott was hired as a full-time housekeeper and was paid \$8.21 per hour. On August 31, 2012 at the claimant's request, Ms. Linscott's status with Childserve Community Options was changed to a part-time teacher assistant position where the claimant was paid per diem. At the time of the change the claimant was specifically informed that there were no guarantees as to the minimum number of working hours she would be assigned in any particular work as a part-time assistant teacher.

The claimant continues to be employed as a part-time assistant teacher at the time of hearing. It is the employer's position that the claimant has been at times offered working hours but the claimant has refused them because of personal reasons.

It is the claimant's position that she left her full-time position in August 2012 because she believed she was being harassed by another employee. It is the claimant's further position that although she was given substantial working hours when she began her part-time employment with Childserve, that the hours have subsequently declined.

**REASONING AND CONCLUSIONS OF LAW:**

The question is whether the evidence in the record establishes Ms. Linscott is still employed at a part-time job at the pay contemplated by the parties when the claimant accepted the change in her employment that she had requested. It does.

The evidence in the record clearly establishes that Ms. Linscott requested and accepted a part-time teacher assistant position at the Childserve Community Options on August 31, 2012 and that the claimant was informed at that time that the position that she requested and was accepting had no guarantee as to the minimum number of hours each week and the claimant was aware that she was being paid per diem and would no longer be paid by the hour. In the claimant's part-time status as a teacher assistant, the claimant's working hours fluctuate due to the staffing needs of her employer and the claimant at times has not been able to accept hours offered due to personal obligations.

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 that the claimant cannot be considered to be partially unemployed as she is still employed part time in the same hours and at the same method of pay as contemplated in the agreement between the parties when she requested and accepted a change to part-time status on August 31, 2012. Although the claimant may have left full-time employment with this organization in the past, the claimant knew that her change to part-time employment would be with no guarantee as to a minimum number of working hours each week and the claimant knew that the pay method would be changed. The claimant accepted these terms of employment for a substantial period of time before filing a claim for partial unemployment insurance benefits with an effective date of November 25, 2012. Because the claimant's reduced workweeks are no different than agreed upon by the parties, benefits are denied as of November 25, 2012.

**DECISION:**

The representative's decision dated December 20, 2012, reference 01, is affirmed. The claimant cannot be considered to be partially unemployed. Benefits are denied as of November 25, 2012. The claimant is still employed part time at the same hours and method of pay as contemplated in the agreement of hire for her new position.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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