

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NANCY J HILL
Claimant

APPEAL NO: 10A-UI-02161-D

**ADMINISTRATIVE LAW JUDGE
DECISION**

WESLEY RETIREMENT SERVICES INC
Employer

OC: 01/10/10
Claimant: Appellant (1)

Section 96.19-38-b – Eligibility for Partial Unemployment Insurance Benefits
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Nancy J. Hill (claimant) appealed a representative's February 9, 2010 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits in conjunction with her employment with Wesley Retirement Services, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was held on April 27, 2010. The claimant participated in the hearing. Bridget McNerney appeared on the employer's behalf and presented testimony from two other witnesses, Maria Jordan and Betty Stone. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the claimant employed by the employer for less than her usual hours and wages even though she remains able and available for work, and is she therefore eligible for full or partial unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on March 25, 2004. Her position is to work full time as a home care aide in the employer's private duty home care service. She is still considered employed, but has not actively worked since on or about December 21, 2009. As the claimant had not been working her prior hours, she established an unemployment insurance benefit year effective January 10, 2010, seeking benefits as being partially or temporarily unemployed.

The claimant's base period for her claim year is the fourth quarter 2008 through the third quarter 2009. Her high quarter for wage credits, the quarter upon which her benefits is calculated, is the second quarter 2009, in which she earned wage credits of \$9,032.00 from the employer. During most of her base period and particularly her final quarters of her base period, the claimant was assigned to one primary client, although she occasionally assisted with some other clients. When one primary client passed away in April 2009, she was soon assigned to another primary client, who passed away on December 22.

During her base period the claimant had been available to work with these clients on an open availability schedule. She frequently worked overnight shifts as well as weekends. As a result, she was often working significant overtime; in the second quarter 2009 she was averaging about 50 hours per week.

When the claimant's primary client passed away on December 22, she had communication with the employer regarding reassigning her to other work. However, as part of this process she submitted a new availability form on December 24. On this form she indicated she wanted 38 to 40 hours per week, but only 7:00 a.m. to at most 3:00 p.m., and only Monday through Saturday. As a result, the employer was unable to offer her an assignment with any comparable primary clients, who frequently needed evening care, as the claimant's clients had in the past. The employer did make various offers of other positions to the claimant which did satisfy the day time work restrictions that the claimant had imposed, but because those assignments individually did not bring the claimant to at least 38 hours, she declined those positions, even though there was some potential that several of those assignments could ultimately be combined to bring the claimant to the full time level she desired.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides that a claimant is deemed partially unemployment insurance benefits if she is not employed at her usual hours and wages and earns less than her weekly benefit amount plus \$15.00 in other employment. Iowa Code § 96.19-38-b. However, implicit with the concept of allowing benefits for a claimant whose hours with her employer have been reduced is the expectation that she remain available for work on the same basis as when she was previously working and earning the wage credits on which her unemployment insurance benefits are based. Iowa Code § 96.4-3; 871 IAC 24.22(2)(a). If an employee so restricts her availability as to make it virtually impossible for her employer to provide her with her prior level of employment, she is not able and available for work and not eligible for unemployment insurance benefits. 871 IAC 24.23(3). As of December 24, 2009 the claimant significantly reduced her availability from that she held open during her base period. While the claimant is certainly free to choose to change and curtail her availability for her own personal reasons, this can and does affect her eligibility for unemployment insurance benefits. Benefits are therefore denied as long as she is not available on the same basis as when she was working during the high quarter of her base period.

DECISION:

The representative's February 9, 2010 decision (reference 01) is affirmed. The claimant is not eligible for partial unemployment insurance benefits effective December 24, 2009, at least until such time as she might choose to return to her prior level of availability.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs