

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**TAMI R GIDDINGS**

Claimant

**APPEAL NO: 18A-UI-04089-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ROCK VALLEY PHYSICAL THERAPY**

Employer

**OC: 10/15/17**

**Claimant: Appellant (1)**

Section 96.4-3 – Able and Available for Work

Section 96.4-3 – Same Hours and Wages

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the March 26, 2018, reference 05, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 25, 2018. The claimant participated in the hearing. Julie Janecek, Lead Executive Assistant and Greg Monson, Administrative Manager, participated in the hearing on behalf of the employer.

**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 full-time lead technician for Rock Valley Physical Therapy on November 13, 2017. The claimant's son has cancer and suffers from diabetes and as a result the claimant accumulated several absences. On December 11, 2017, the claimant received a verbal warning about attendance. On March 15, 2018, the employer switched the claimant to a PRN employee and the claimant has not received any hours since that date.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is not employed at the same hours and wages as contemplated in the original contract of hire.

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 was hired as a full-time lead technician. While the claimant has not been separated from this employer, she is not currently working at the same hours and wages as contemplated in the original contract of hire because the employer changed her status to PRN and has not scheduled her since March 14, 2018. While the claimant experienced attendance issues due to the illness of her son, she is considered able and available for work. Under these circumstances, the administrative law judge must conclude the claimant is not working at the same hours and wages as contemplated in her original contract of hire. Therefore, benefits are allowed.

**DECISION:**

The March 26, 2018, reference 05, decision is affirmed. The claimant is not employed at the same hours and wages as in her original contract of hire. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/scn