

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBIN MCCARTY
Claimant

APPEAL NO. 13A-UI-09242-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TRI-STATE NURSING ENTERPRISES INC
Employer

OC: 07/07/13
Claimant: Appellant (1)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Robin McCarty (claimant) appealed a representative's August 9, 2013, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was still employed with Tri-State Nursing Enterprises (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for September 16, 2013. The claimant participated personally. The employer participated by Nicole Moodie, Staffing Supervisor.

ISSUE:

The issue is whether the claimant is able and available 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 employer is a temporary agency and staffing service. The claimant was hired on June 18, 2013. During the week ending July 13, 2013, the claimant worked 27 hours and earned \$362.38 gross wages. She continued to work where the employer placed her. She was last assigned to work at Memorial Community Hospital on July 23 and 24, 2013, as a part-time certified nursing assistant. The claimant needed a license in order to work for the employer. The claimant was next scheduled to work on August 2, 2013. On August 1, 2013, the claimant notified the employer that her license was revoked. The employer could no longer employ the claimant.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was still employed at the same hours and wages as her original contract for hire.

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 claimant was hired as a part-time worker. She was still employed in a part-time position as was agreed to at the time she was hired. The claimant could not be considered unemployed up until the time of her separation. She is disqualified for being unavailable for work.

DECISION:

The representative's August 9, 2013, decision (reference 01) is affirmed. The claimant is disqualified for being unavailable for work because she was employed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs