

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

PATRESE M ANDEREGG
Claimant

TAHER INC
Employer

APPEAL 19A-UI-03160-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/03/19
Claimant: Appellant (1)

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

On April 15, 2019, the claimant filed an appeal from the April 3, 2019, (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on May 8, 2019. Claimant participated and testified. Employer participated through Human Resource Specialist Juan Ruiz.

ISSUE:

Is the claimant totally or partially unemployed and available for work effective March 17, 2019?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on July 1, 2018. Claimant is currently employed as a part-time head cook. At the time of claimant's hire, she was guaranteed at least five and a half hours of work per day, Monday through Friday, though sometimes more hours are available. Claimant is off work completely when school is closed, unless there is inventory coming in or required continued education. Claimant was off work March 11 through March 15, 2019 for spring break, but worked her regular hours the week of March 3 and every week since March 17, 2019. Claimant did not file a weekly continued claim for benefits for the week of March 10, 2019.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the issues are moot.

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 Code § 96.19(38) provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

In this case, claimant worked her regular hours the week of March 17, 2019 and has been working her regular hours since March 17, 2019. Thus, claimant would not be eligible for benefits from March 17, 2019 forward, until such time as she is totally unemployed or employed at hours less than those contemplated in her contract of hire.

DECISION:

The April 3, 2019, (reference 02) unemployment insurance decision is affirmed. Claimant is not totally or partially unemployed and is therefore not eligible for benefits.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs