

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

STEPHANIE M BAKER
Claimant

APPEAL NO. 18A-UI-09304-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SECURITAS SECURITY SERVICES USA
Employer

OC: 08/05/18
Claimant: Appellant (2)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Stephanie Baker (claimant) appealed a representative's August 29, 2018, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was unwilling to work the number of hours required in her occupation with Securitas Security Services USA (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for September 25, 2018. The claimant participated personally. The employer was represented by Barbara Toney, Hearings Representative, and participated by Ashley Parisi, Region Recruitment Coordinator.

ISSUE:

The issue is whether the claimant was able and available for work and whether the claimant is partially unemployed.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked for the employer from January 28, 2016, to the present. From January 28, 2016, to August 2, 2018, the claimant was a full-time first shift security guard assigned to work at Sodexo. Her assignment ended and the employer did not have any other full-time work available. The claimant was available to work first shift hours. She watched a university employee's children from 4:30 p.m. to 1:30 a.m. in exchange for rent.

The claimant filed for unemployment insurance benefits with an effective date of August 5, 2018. She did not file a claim for the two-week period ending August 18, 2018.

On August 16, 2018, the employer assigned the claimant to work part-time for the University of Iowa. The claimant worked at the hospital and football hours. She accepted every assignment the employer offered.

The claimant reopened her claim on August 19, 2018, and filed weekly claims. Her weekly benefit amount is \$283.00. She reported wages of \$160.00 or less each of the five weeks she filed.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was able and available for work as of August 5, 2018.

Iowa Code section 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".

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). There was no evidence that there were any restrictions or limitations on employability. The claimant was able to watch children and work her full-time job until August 2, 2018. This activity did not hinder her ability to work after August 2, 2018. The claimant was able and available for work as of August 5, 2018.

The administrative law judge concludes the claimant is partially unemployed as of August 19, 2018.

Iowa Code section 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.

As of August 19, 2018, the employer only had part-time work available for the claimant. The most the claimant was earning was \$160.00 per week. The Iowa Code specifies that if the claimant earned less than her weekly benefit amount (\$283.00) plus fifteen dollars while working fewer than her regular full-time week, she is considered to be partially unemployed. The claimant's hours can be considered regular because she was regularly full-time for eighteen months. Benefits are allowed as of August 19, 2018, provided the claimant is otherwise eligible.

DECISION:

The representative's August 29, 2018, decision (reference 01) is reversed. The claimant was able and available for work as of August 5, 2018. The claimant is partially unemployed as of August 19, 2018. Benefits are allowed as of August 19, 2018, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs