

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**MARY E BALM**  
Claimant

**HENRY WILLIAMS**  
Employer

**APPEAL 18R-UI-10266-CL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/29/18  
Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Availability Disqualifications  
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the August 27, 2018, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on October 29, 2018. Claimant participated personally. Employer participated personally. Renee McAtee and Allory Kliegl observed.

**ISSUES:**

Is the claimant eligible to receive partial benefits?  
Is the claimant able to work and available for work effective July 29, 2018?  
Is the claimant still employed at the same hours and wages?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer as a community adult directed care assistant in 2012. Employer has a brain injury and receives benefits through United Healthcare. United Healthcare determines the amount of hours it will pay for employer's care per month.

When claimant was hired, United Healthcare authorized employer to receive 45 hours of care per month. Employer did not guarantee claimant he would schedule her to work a certain number of hours per month as it was and is the decision of United Healthcare.

At the end of July 2018, United Healthcare cut employer down to 3.75 hours of care per month. Claimant worked 3.75 hours on August 3, September 5, and October 3, 2018.

Claimant is also self-employed six to eight hours per month. Claimant is not looking for other work as she is waiting to work more hours through self-employment and hoping United Healthcare will increase employer's benefits in six months.

Claimant has only part-time wages from employer in her base period.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not partially unemployed and therefore not eligible for benefits effective July 29, 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".

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.

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.

In this case, claimant was hired to provide part-time care to employer. Employer did not guarantee claimant she would be scheduled to work a minimum number of hours per month. Claimant understood her work schedule was at United Healthcare's discretion. Claimant is still employed on a part-time basis. Therefore, she cannot be considered partially unemployed and is not eligible for partial unemployment insurance benefits.

**DECISION:**

The August 27, 2018, (reference 01) unemployment insurance decision is affirmed. The claimant is not partially unemployed and benefits are denied.

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Christine A. Louis  
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Decision Dated and Mailed

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