

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

OUMAR COULIBALY
Claimant

SYSTEMS UNLIMITED INC
Employer

APPEAL 19A-UI-05510-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/02/19
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
Iowa Admin. Code r. 871-24.23(26) – Availability Disqualifications Same Hours and Wages

STATEMENT OF THE CASE:

On July 10, 2019, the claimant filed an appeal from the July 2, 2019, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was still employed at the same hours and wages as contemplated in his contract of hire. The parties were properly notified of the hearing. A telephonic hearing was held on Monday, August 5, 2019. The claimant, Oumar Coulibaly, participated. The employer, Systems Unlimited, Inc., registered a telephone number but did not answer when called for the hearing.

ISSUES:

Is the claimant partially unemployed?

Is the claimant able to and available for work?

Is the employer's account subject to charge?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began his employment with Systems Unlimited approximately five years ago. Claimant works for Systems Unlimited as a direct support professional. Claimant has only ever worked part-time hours for Systems Unlimited. For the past two years, claimant has worked weekends only. Claimant remains employed by Systems Unlimited as a part-time direct support professional.

Previously, claimant worked for Durham School Services as a part-time bus driver. Claimant was let go from this position sometime around June 1, 2019, when Durham School Services lost its contract with the City of Iowa City. This led claimant to file for unemployment insurance benefits.

Claimant claimed one week of unemployment insurance benefits. During that week, claimant was able to work and was available to go to work. Claimant applied for at least two jobs that

week, as instructed. He was offered and accepted one of the jobs he applied for, so he stopped claiming benefits after that week.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is not partially unemployed. Benefits are withheld.

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".

...

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...

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.

Under Iowa Employment Security Law, an individual must be totally or partially unemployed to be eligible for benefits. Iowa Code § 96.19(38). The question presented in this case is whether

claimant is partially unemployed. In order to be partially unemployed, an individual must be laid off from full-time employment or working less than his or her regular full-time work week. *Id.* If an individual is employed in a part-time position working the same hours and wages as contemplated at hire, he or she cannot be considered partially unemployed. Iowa Admin. Code r. 871-24.23(26). The claimant was hired into a part-time position with Systems Unlimited. He has worked part-time hours during his entire employment. He continues to work for the employer in a part-time position. He has worked in this same capacity for approximately the last two years. As the claimant is working in a part-time job in the same hours and wages contemplated at hire, or agreed to shortly thereafter, the claimant is not partially unemployed and is not eligible for benefits.

DECISION:

The July 2, 2019, (reference 01) unemployment insurance decision is affirmed. Claimant is not partially unemployed. Benefits are withheld.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn