

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KRISTIN N LANGE
Claimant

REBOUND 800 LOCUST LLC
Employer

APPEAL 18A-UI-09060-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/29/18
Claimant: Appellant (2)

Iowa Code § 96.4(3) – Able and Available
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Part time, same hours and wages
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the August 21, 2018 (reference 01) unemployment insurance decision that found claimant was ineligible for unemployment benefits because she was not willing to work the number of hours required in her occupation. The parties were properly notified of the hearing. A telephone hearing was held on September 18, 2018. The claimant, Kristin N. Lange, was represented by attorney Steviee N. Grove and participated personally. The employer, Rebound 800 Locust LLC, participated through witnesses Barbara Adix and Carl Deeken. Claimant's Exhibit A was admitted. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUES:

Is the claimant able to work and available for work?
Is claimant employed for the same hours and wages?
Is the claimant eligible to receive partial unemployment benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The employer operates a hotel. Claimant was employed as a front desk agent and night auditor. Claimant was hired in June of 2017. She was hired as a part-time employee with the opportunity to become a full-time employee. She became a full-time employee in July of 2017. Claimant worked five days per week; however, the days of the week she worked would vary from week to week. She typically worked 3:00 p.m. to 11:00 p.m. or 11:00 p.m. to 7:00 a.m. work shifts.

In September of 2017, claimant requested to be a part-time employee due to beginning another job with a different employer. This employer accommodated her request and her hours were reduced. Claimant left the other employer and she requested to go back to being a full-time employee with this employer in November of 2017. The employer allowed her to do so and claimant was back to receiving full-time hours by January 1, 2018, working five days per week.

In June of 2018, claimant began going to school and requested that she only work four days per week, instead of five days per week. This reduced her normal work schedule to approximately 32 hours per week and she remained as a full-time employee.

In July of 2018, claimant struggled with personal health issues and was absent from work due to illness for several days. Claimant also requested personal vacation leave for several days in July. As such, claimant did not work her normal four day per week schedule in July but remained a full-time employee.

Claimant filed her initial claim for benefits effective July 29, 2018. Claimant worked two days (August 1, 2018 and August 2, 2018) for the week of July 29, 2018 through August 4, 2018.

The week of August 5, 2018 through August 11, 2018, claimant worked two days (August 5, 2018 and August 11, 2018). Claimant was scheduled to work on August 6, 2018 but was removed from the schedule by the employer. Claimant was removed from the schedule because the employer had hired another full-time employee who was able to work claimant's normal work shifts and the employer unilaterally decided not to schedule the claimant to work. Claimant was able to and available for work the majority of the week-ending August 11, 2018.

The week of August 12, 2018 through August 18, 2018, claimant did not work. Claimant had requested August 17, 2018 and August 18, 2018 for personal vacation time. Claimant was not scheduled to work August 12, 2018 through August 16, 2018 because another employee was able to work her shifts and the employer unilaterally decided not to schedule the claimant to work. Claimant was able to and available for work the majority of the week-ending August 18, 2018.

The week of August 19, 2018 through August 25, 2018, claimant did not work and then separated from employment on or about August 25, 2018. Claimant was not scheduled to work August 19, 2018 through August 25, 2018 because another employee was able to work her shifts and the employer unilaterally decided not to schedule the claimant to work. Claimant was able to and available for work the majority of the week-ending August 25, 2018.

Claimant was in the hospital due to personal illness September 6, 2018 through September 13, 2018. She has no current working restrictions following her hospitalization. Claimant did not file any weekly-continued claims for benefits for the week-ending September 8, 2018 or the week-ending September 15, 2018. Claimant is currently able to and available for work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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 § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

(emphasis added).

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.

For the weeks in question, the claimant has been partially unemployed or totally unemployed pursuant to Iowa Admin. Code r. 871-24.23(26). Iowa Code § 96.3 subsection (4) is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 96.19, subsection 38, paragraph "c". An individual is partially unemployed in any week in which the individual works less than the regular full-time week and earns less than the individual's weekly benefit amount plus fifteen dollars. Iowa Code § 96.19(38)b(1).

Beginning July 29, 2018, claimant worked less than her regular (4 days per week) full-time week and earned less than her weekly-benefit amount plus fifteen dollars. As such, she was partially unemployed for the week-ending August 4, 2018 and August 11, 2018. She did not work during the week-ending August 18, 2018, August 25, 2018 and September 1, 2018, and was totally unemployed for those weeks.

Claimant was in the hospital due to personal illness September 6, 2018 through September 13, 2018. She has no current working restrictions following her hospitalization. Claimant did not file any weekly-continued claims for benefits for the week-ending September 8, 2018 or the week-ending September 15, 2018. Because claimant has been able to and available for work the majority of the work weeks in question, benefits are allowed effective July 29, 2018, provided she remains otherwise eligible.

DECISION:

The August 21, 2018 (reference 01) unemployment insurance decision is reversed. The claimant was able to and available for work and benefits are allowed effective July 29, 2018, provided the claimant is otherwise eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs