

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DEON C BROWN**  
Claimant

**APPEAL NO. 08A-UI-03190-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MERCY MEDICAL CENTER—CENTERVILLE**  
Employer

**OC: 11/04/07 R: 03**  
**Claimant: Appellant (1-R)**

Iowa Code Section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

Deon Brown filed a timely appeal from the March 20, 2008, reference 04, decision that denied benefits effective December 30, 2007 and concluded that Ms. Brown had unduly limited her work availability. After due notice was issued, a hearing was held on April 24, 2008. Ms. Brown participated. Tonya Clawson, Human Resources Manager, represented the employer. The administrative law judge took official notice of the Agency's administrative record of wages reported by the claimant and benefits disbursed to the claimant.

**ISSUE:**

Whether the claimant has been available for work since she established an additional claim for benefits that was effective December 30, 2007.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Deon Brown commenced her part-time employment with Mercy Medical Center on September 11, 2007 and worked as a Dietary Aide. Peggy Faulk, Dietary Supervisor, told Ms. Brown she could expect to receive 32 hours during each two-week pay period. This was minimum number of hours Ms. Brown needed to work to be eligible for the employer's health and dental insurance programs. At the time of hire, Ms. Brown was a full-time college student and was participating in an Administrative Assistant program at a community college. Ms. Brown told Ms. Faulk that she was not available to work on Tuesdays and Thursdays due to her class schedule. Ms. Brown's weekly hours through the week that ended November 3, 2007 were as follows. The dates noted are the end of the applicable work week:

9/15/07	15
9/22/07	16
9/29/07	21
10/6/07	12.5
10/13/07	9.5
10/20/07	10
10/27/07	14
11/3/07	8

Ms. Brown established an original claim for unemployment insurance benefits that was effective November 4, 2007. The claim for benefits was established in response to a temporary dip in Ms. Brown's scheduled work hours. At the time Ms. Brown established her claim for benefits, Workforce Development calculated her weekly benefit amount to be \$141.00. After she established the claim, Ms. Brown reported her weekly wages and Workforce Development determined her benefit eligibility accordingly. During the two-week period of November 4-17, 2007, Ms. Brown reported wages that were less than her weekly benefit amount and received reduced benefits. During the six-week period of November 18 through December 29, 2007, Ms. Brown reported wages that exceeded her weekly benefit amount and, therefore, did not receive any unemployment insurance benefits. Ms. Brown's weekly work hours for the period of November 4 through December 29, 2007 were as follows. The dates noted are the end of the applicable work week.

11/10/07	16.5
11/17/07	17.5
11/24/07	30
12/1/07	35
12/8/07	22.5
12/15/07	20.5
12/22/07	24
12/29/07	27.5

These documented work hours indicate that Ms. Brown consistently worked more than the promised 16 hours per week during the period November 4 through December 29, 2007. Ms. Brown established an "additional claim" for benefits that was effective December 30, 2007. During the two-week period of December 30, 2007 through January 12, 2008, Ms. Brown reported wages that were less than her weekly benefit amount and received reduced benefits. During the week of December 30, 2007 through January 5, 2008, Ms. Brown worked 15.5 hours. However, Ms. Brown had requested to be off work during January 2-5 and was out of state during that time. During the week of January 6 through 12, Ms. Brown worked 11.5 hours. However, this week coincided with the start of Ms. Brown's college term on January 8 and coincided with a further limiting of Ms. Brown's work availability. Ms. Brown had notified the employer she would now be unavailable to work Tuesday, Wednesday and Thursday.

During the four-week period of January 13 through February 9, 2008, Ms. Brown reported wages that exceeded her weekly benefit amount and did not receive unemployment insurance benefits. Ms. Brown's work hours for this period were as follows. The dates noted are the end of the applicable week:

1/19/08	30
1/26/08	36
2/2/08	23
2/9/08	20.5

These documented work hours indicate that Ms. Brown was working more than the promised 16 hours per week.

During the two-week period of February 10-23, 2008, Ms. Brown reported wages that were less than her weekly benefit amount and received reduced benefits. During the week that ended February 16, Ms. Brown worked 15.5 hours. During the week that ended February 23, Ms. Brown worked 12 hours, but had utilized an additional 7.5 hours of paid time off (PTO).

Ms. Brown graduated from the Administrative Assistant program on February 19, 2008. After graduating, Ms. Brown continued to work for Mercy Medical Center. During the week that

ended March 1, 2008, Ms. Brown reported wages that were less than her weekly benefit amount and received reduced benefits. Ms. Brown worked 24 hours during this week.

The employer terminated Ms. Brown's employment on March 3. Ms. Brown worked 10 hours during the final week of her employment before being discharged. Ms. Brown reported wages that were less than her weekly benefit amount and received reduced benefits.

### **REASONING AND CONCLUSIONS OF LAW:**

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".

871 IAC 24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

This matter concerns Ms. Brown's work availability since she established the "additional claim" for benefits that was effective December 30, 2007.

The evidence indicates that Ms. Brown's original claim was based on a theory of partial unemployment. In other words, Ms. Brown had asserted that she was not receiving the hours she had been promised at the start of the employment. An individual shall be deemed partially unemployed in any week in which, while employed at the individual's then regular job, the individual works less than the regular workweek and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars. See Iowa Code section 96.19(38)(b). However, 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. See 871 IAC 24.23(26). In other words, while Ms. Brown continued in the employment with

Mercy Medical Center, she could not be partially unemployed during any week in which she worked 16 hours per week or 32 hours in a two-week pay period. With this in mind, the administrative law judge concludes that Ms. Brown was not partially unemployed, and was ineligible for benefits, during the four-week period of January 13 through February 9, 2008. Ms. Brown was not partially unemployed, and was ineligible for benefits, during the two-week period of February 10-23, 2008. During this two-week period, Ms. Brown worked 27.5 hours, but utilized an additional 7.5 hours of paid time off. This brought her total hours for the two-week period to 35. Ms. Brown was not partially unemployed, and not eligible for benefits, during the week that ended March 1, 2008, when she worked 24 hours.

This leaves the two-week period of December 30 through January 12, during which time Ms. Brown worked 27 hours. During the week that ended January 5, Ms. Brown voluntarily reduced her hours by requesting to be off work from Wednesday, January 2 through Saturday, January 5, so that she could travel out of state. The weight of the evidence indicates that additional work hours would have been available for Ms. Brown. If a person is out of town for personal reasons for the major portion of the week, the person is not available for work and is ineligible for unemployment insurance benefits. See 871 IAC 24.23(25). The weight of the evidence indicates that during the week that ended January 12, Ms. Brown did not receive additional work hours because her school schedule made her unavailable for work Tuesday through Thursday. A person will be ineligible for benefits if a person is unwilling to work during the hours in which suitable work is available. See 871 IAC 24.23(16).

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Brown did not meet the work availability requirements of Iowa Code section 96.4(3) during the period of December 30, 2007 and March 1, 2008. Accordingly, Ms. Brown was not eligible for benefits during that period.

Because there was a separation from the employment on March 3, 2008, and because Workforce Development records raise the question of whether the claimant has been available for work or engaged in an active and earnest search for employment since the separation, the administrative law judge remands this matter to the Claims Division for further investigation and a decision regarding the claimant's availability for work since the March 3, 2008 separation.

**DECISION:**

The Agency representative's March 20, 2008, reference 04, decision is affirmed. The claimant has not met the availability requirements of Iowa Code section 96.4(3) since December 30, 2007. The claimant is ineligible for benefits effective December 30, 2007. The administrative law judge remands this matter to the Claims Division for further investigation and a decision regarding the claimant's availability for work since the March 3, 2008 separation.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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