

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CATHARINE SHAFFER
Claimant

APPEAL 18A-UI-08587-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAREWAY STORES INC
Employer

**OC: 07/22/18
Claimant: Respondent (2)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(26) – Availability Disqualifications
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

The employer filed an appeal from the August 8, 2018, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 30, 2018. Claimant participated. Employer participated through director of human resources director Theresa McLaughlin and grocery manager Matt Weber.

ISSUES:

Is the claimant eligible to receive partial unemployment insurance benefits?
Is the claimant still employed in a part-time job at the same hours and wages?
Is the claimant able to work and available for work effective July 22, 2018?
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 working for employer on December 17, 2013. Claimant was hired as a part-time employee. Employer has not guaranteed claimant she will be scheduled for a minimum number of hours per week. However, up until June 2018, claimant generally worked between 10 and 15 hours per week. Claimant's scheduled hours were reduced to five hours per week in June 2018.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not unemployed and is not eligible for benefits.

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.

Because claimant was hired to work only part-time hours and was not guaranteed full-time hours, and the wage history consists of only part-time wages, the claimant is not considered to be unemployed within the meaning of the law. When an individual is hired to work part-time, the implied agreement is that full-time work will not be regularly available. Thus since the employer continues to provide regular part-time hours and is currently employed under the same hours and wages as contemplated at hire, she is not considered partially unemployed and is not eligible for benefits.

Because claimant is not unemployed and is not eligible for benefits, the issues regarding whether she is able to and available for work and whether the employer's account is subject to charge are moot and will not be discussed further in this decision.

DECISION:

The August 8, 2018, (reference 01) unemployment insurance decision is reversed. The claimant is not partially unemployed and benefits are denied.

Christine A. Louis
Administrative Law Judge
Unemployment Insurance Appeals Bureau
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Des Moines, Iowa 50319-0209
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Decision Dated and Mailed

cal/scn