

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KENIA L CHAVEZ
Claimant

A+ IOWA DENTAL PLLC
Employer

APPEAL 19A-UI-08709-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/22/19
Claimant: Respondent (4)

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
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

On November 4, 2019, the employer filed an appeal from the October 31, 2019, (reference 03) unemployment insurance decision that allowed benefits based on a reduction in hours. The parties were properly notified about the hearing. A telephone hearing was held on November 21, 2019. Claimant did not register for the hearing and did not participate. Employer participated through Robin Ollie. Employer's Exhibit 1 was received.

ISSUES:

Is the claimant eligible to receive partial benefits?
Is the claimant able to and available for work?
Is the claimant still employed at the same hours and wages?
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 in March 2019. Employer hired claimant to work on a full-time basis. Claimant has been offered full-time hours since the beginning of her employment. Claimant filed a claim for unemployment insurance benefits effective September 22, 2019. The only time claimant has worked reduced hours for employer since that date was weeks in which the claimant called in sick or did not appear for work. Employer has consistently offered the same amount of hours to claimant.

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".

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, employer is still offering claimant the same hours and wages as agreed upon at the time of hire. Any reduction in hours was triggered by claimant's inability to work or unavailability the available hours. Therefore, claimant is not eligible for unemployment benefits effective September 22, 2019.

DECISION:

The October 31, 2019, (reference 03) unemployment insurance decision is modified in favor of employer. To the extent claimant has worked reduced hours, it is because she is not available for work. Therefore, benefits are denied effective September 22, 2019. The account of the employer (595770) is not chargeable for the period at issue.



Christine A. Louis
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November 27, 2019
Decision Dated and Mailed

cal/scn