

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**DIEDRA SCANLAN**  
Claimant

**APPEAL NO: 19A-UI-01326-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CITY OF OSCEOLA**  
Employer

**OC: 01/13/19  
Claimant: Respondent (2R)**

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

**STATEMENT OF THE CASE:**

The employer filed an appeal from the February 6, 2019, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on March 1, 2019. The claimant participated personally. The employer participated through Aric Bishop, library director. Ty Wheeler, city administrator, also testified for the employer.

The administrative law judge took official notice of the administrative records including the fact-finding documents, wage records (WAGE-A) and weekly continued claim history (KCCO). Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

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

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: In 2014, employer hired claimant to work as a full-time library technician. The claimant continued to work in this capacity until January 1, 2019. Following a review of the claimant's hours worked over 68 weeks, the claimant had only averaged 17.5 hours per week, thereby not working a full-time schedule (but receiving benefits as a full-time employee). Claimant stated her inability to maintain full-time hours during the period was related to multiple deaths in her family, and PTSD, for which she is currently being treated. Currently, claimant cannot perform work if she takes full dosage of her prescribed medication.

Employer reclassified the claimant to library assistant, at the same rate of pay and told claimant she could continue employment on a part-time basis. Employer did not guarantee that claimant

would be scheduled to work a certain number hours per week. Claimant agreed to the arrangement.

Claimant opened her claim effective January 13, 2019, after accepting the position as part-time library assistant. From January 13 through February 15, 2019, the claimant was scheduled between 8-18 hours of work each week, at a rate of pay of \$13.00 per hour. The claimant permanently separated from employment effective February 15, 2019. That separation will be addressed in the pending reference 02 decision. During the period of January 13, 2019 through February 15, 2019, the claimant called off work or no-call/no-showed to multiple shifts for different reasons, thereby limiting wages she could have earned.

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

For the reasons that follow, the administrative law judge concludes the claimant was not partially unemployed for the period of January 13, 2019 through February 15, 2019.

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.

Effective January 1, 2019, claimant agreed to work part-time as a library assistant after she was unable to maintain full-time hours for over a one year period. Claimant was not guaranteed full-time hours, the claimant is not considered to be unemployed within the meaning of the law. When an individual agrees to work part-time, the implied agreement is that full-time work will not be regularly available. Thus since the employer provided regular part-time hours and claimant agreed from January 13, 2019 through February 15, 2019, she was not considered partially unemployed.

Claimant's permanent separation will be addressed in the reference 02 decision. Her group code should change from reflecting she is temporarily unemployed to permanently employed, and therefore required to make work search contacts.

**REMAND:** The issues of whether the claimant has been overpaid benefits and whether the claimant is able to and available for work due to illness/injury are remanded to the Benefits Bureau for investigation and initial decision.

**DECISION:**

The February 6, 2019 (reference 01) initial decision is reversed. The claimant is not partially unemployed and benefits are denied. If the circumstances change and claimant believes the disqualification can be removed, she should contact Iowa Workforce Development. **REMAND:** The issues of whether the claimant has been overpaid benefits and whether the claimant is able to and available for work due to illness/injury are remanded to the Benefits Bureau for investigation and initial decision.

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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

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