

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DELORES B ALLEN
Claimant

B S O A
Employer

APPEAL 18A-UI-07176-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/10/18
Claimant: Respondent (3R)

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

STATEMENT OF THE CASE:

The employer filed an appeal from the June 29, 2018, (reference 01) unemployment insurance decision that allowed benefits based upon a determination that claimant was still employed in a part-time/on-call capacity. The parties were properly notified of the hearing. A telephone hearing was held on July 20, 2018. The claimant, Delores Allen, participated. The employer, Boy Scouts of America, participated through Traci Raber, Field Director.

ISSUES:

Is the claimant partially unemployed effective June 10, 2018?
Is the claimant available for work effective June 10, 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 is employed part-time as a paraprofessional with the employer's Scoutreach program. She began working for the employer on September 11, 2017. According to the employer, claimant last reported to work in November 2017. Claimant contacted the employer in January 2018 about the possibility of returning to work. Claimant alleges she worked additional hours in December 2017 and March 2018 but was not paid for these hours, so she stopped working for the employer. Claimant is physically able to work. She has been in town and actively searching for work since filing her claim for benefits in June 2018. Claimant has an account on Indeed.com and searches for work on that site. Additionally, claimant is connected with a temporary staffing agency, and she has applied for work at restaurants.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is totally unemployed.

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 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 § 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.

Under Iowa Employment Security Law, an individual must be totally or partially unemployed to be eligible for benefits. Iowa Code § 96.19(38). Total unemployment is when someone has received no wages and performed no services during any given week. *Id.* In this case, the claimant did not perform services or earn wages for any week since filing her claim for benefits effective June 10, 2018. Claimant is totally unemployed. Claimant has established that she is able to work, available for work, and actively and earnestly seeking work. Because claimant is totally unemployed, the issue of the chargeability of the employer's account is moot at this time.

It appears claimant has separated from this employer, based on her testimony. Therefore, this matter will be remanded for a fact-finding decision on the separation.

DECISION:

The June 29, 2018, (reference 01) unemployment insurance decision is modified in favor of the claimant/respondent. Claimant is totally unemployed, benefits are allowed, provided she is otherwise eligible. Claimant is able to and available for work. The issue of the chargeability of the employer's account is moot at this time.

REMAND:

This matter is remanded to the Benefits Bureau of Iowa Workforce Development for initial investigation and determination of claimant's separation from the employer.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn