

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MOSES T BROWNE**  
Claimant

**DEE ZEE INC**  
Employer

**APPEAL 17A-UI-08141-DL-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/15/17**  
**Claimant: Appellant (5R)**

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Iowa Code § 96.19(38)a & b – Total and Partial Unemployment  
Iowa Code § 96.4(3) – Ability to and Availability for Work

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the August 2, 2017, (reference 04) unemployment insurance decision that denied benefits based upon not being partially unemployed but incorrectly relied on Iowa Code section 96.4(3), rather than Iowa Code section 96.19(38) in the decision. The parties were properly notified about the hearing. A telephone hearing was held on August 28, 2017. Claimant participated. Employer participated through human resource specialist Lacey Little.

**ISSUE:**

Is the claimant partially unemployed effective July 9, 2017?  
Is the claimant able to work and available for work?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant is employed full-time on third shift and was laid off during a one-week plant shut-down from July 2 through July 6, during which he received holiday pay for one day. He returned to his regular work schedule on July 9, 2017, and did not file a weekly continued claim. Apart from the week of layoff he is working his regular hours of employment.

He filed his claim effective July 9, 2017, and stated in the fact-finding interview that he wants unemployment insurance benefits for the week of the layoff from July 2 through July 6, 2017. This requested backdating issue has not yet been addressed at the Benefits Bureau level.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant is not partially or fully unemployed effective July 9, 2017, and the issue regarding his availability for work is moot.

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 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".

Because claimant filed his claim as solely related to a one-week layoff during a plant shut-down between July 2 and 6, 2017, but filed his claim effective July 9, 2017, after he returned to his regular full-time employment on that date, he is not considered either partially or fully unemployed effective July 9, 2017. Accordingly, the issue of his availability for work is moot. The question that the fact-finding interviewer should have decided is whether the claim can be backdated to the week during which the layoff occurred, effective July 2, 2017.

**DECISION:**

The August 2, 2017, (reference 04) unemployment insurance decision is modified without change in effect. The claimant is not partially unemployed and benefits are denied as the claimant returned to work after a week-long layoff on July 9, 2017. The availability for work issue is moot.

**REMAND:** Because the claimant is seeking unemployment insurance benefits for the week-ending July 8, 2017, and not for the week of July 9, 2017, when he returned to work, the backdating issue delineated in the findings of fact and reasoning portions of this decision is remanded to the Benefits Bureau of Iowa Workforce Development for a fact-finding interview and unemployment insurance decision pursuant to Iowa Code section 96.6(1) and Iowa Admin.

Code r. 871-24.2(1)h(1), (2). While addressing these types of issues, the Benefits Bureau fact-finding interviewer is advised to be mindful of the difference between requesting benefits for the week before or after filing the claim, partial and total unemployment, temporary and permanent layoff, and understand that an individual who is laid off due to a shut-down or other lack of work for fewer than four consecutive weeks is not required to search for work or otherwise be available to work, except to be available to return to work for the employer when work is available. See also the Unemployment Insurance Benefits Handbook at the link above for more information.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/rvs