

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**RAMIRO CALDERON**  
Claimant

**COUNCIL BLUFFS PAYROLL COMPANY**  
Employer

**APPEAL 17A-UI-04646-SC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/08/16**  
**Claimant: Appellant (2-R)**

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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  
Iowa Admin. Code r. 871-24.23(26) – Availability Disqualifications Same Hours and Wages

**STATEMENT OF THE CASE:**

Ramiro Calderon (claimant) filed an appeal from the April 26, 2017, reference 01, unemployment insurance decision that denied benefits based upon the determination he was working the same hours and wages as his original contract of hire with Council Bluffs Payroll Company (employer) and cannot be considered partially unemployed. The parties were properly notified about the hearing. A telephone hearing was held on May 17, 2017. The claimant participated personally. The employer did not respond to the hearing notice and did not participate. Dayonara (employee number 8256) from CTS Language Link provided Spanish interpretation services. No exhibits were offered or received.

**ISSUES:**

Is the claimant partially unemployed effective February 19, 2017?  
Is the claimant available for work effective February 19, 2017?  
Is the claimant working in the same hours and wages contemplated at hire?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time beginning on June 4, 2012. He earns \$14.70 an hour and works 40 hours a week. He opened a claim for unemployment insurance benefits the week of May 8, 2016. His weekly benefit amount is \$447.00.

The claimant reactivated his claim for benefits the week of March 26, 2017. He worked 29 hours each week for the two week period ending April 8, 2017. The week ending April 15, 2017, the claimant only received 8-hours of holiday pay, otherwise, the plant was closed and he was laid off.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is partially unemployed and benefits are allowed. As the claimant is partially unemployed, the issues of whether he is able to work or available for work are waived.

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.

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.

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 has performed services and earned wages for the three weeks he has claimed benefits. He is not totally unemployed.

The next question is whether he is partially unemployed. In order to be partially unemployed, an individual must work less than his full-time week earning less than his weekly benefit amount plus \$15 or be temporarily unemployed for no more than four weeks due to a plant shutdown. *Id.* The claimant worked 29 hours and earned \$426.30 in gross wages for the two weeks ending April 8, 2017. He was partially unemployed as he worked fewer than his normal full-time hours and did not earn more than \$462, or his weekly benefit amount of \$447 plus \$15. The third week he was employed he received holiday pay in the amount of \$117.60 but did no work for the employer due to a plant shutdown. He returned to work the following week. The claimant was partially unemployed each of the three weeks he claimed benefits.

As the claimant was partially unemployed, the requirements that he be able to work, available for work, and actively seeking work are waived.

**DECISION:**

The April 26, 2017, reference 01, unemployment insurance decision is reversed. The claimant is partially unemployed. Benefits are allowed.

**REMAND:**

The amount of benefits for which the claimant is entitled for the three weeks he claimed benefits beginning March 26, 2017 through the week ending April 15, 2017 is remanded to the Benefits Bureau for calculation.

It should be noted, the claimant reported in his weekly continued claim for benefits that he earned wages in the amounts of \$440 for week ending April 1, \$420 for week ending April 8, and no wages for week ending April 15. However, his testimony indicates he received \$426.30 each week for the two-week period ending April 8 and \$117.60 in holiday pay for the week ending April 15.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed  
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