

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DANIEL MCCOY
Claimant

COMMUNITY NEURO REHAB OF IOWA INC
Employer

APPEAL 17A-UI-04804-LJ-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 04/02/17
Claimant: Respondent (4)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions
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:

The employer filed an appeal from the April 28, 2017 (reference 01) unemployment insurance decision that determined claimant was eligible for unemployment insurance benefits as he was employed part time and not performing services in the same pattern of employment as in his base period. The parties were properly notified of the hearing. A telephone hearing was held on May 23, 2017. The claimant, Daniel McCoy, participated. The employer, Community Neuro Rehab of Iowa, Inc., participated through Tom Brown, CEO; and Madonna Valencia, Human Resources Manager. Claimant's Exhibit A and Employer's Exhibit 1 were received and admitted into the record.

ISSUES:

Does the claimant meet the definition of being considered partially unemployed?
Does the claimant meet the definition of being considered totally unemployed?
Is the claimant able to work and available for work effective April 2, 2017?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a per diem PRN-status Brain Injury Specialist—Level One, beginning on August 16, 2016. Claimant remains employed in this position. Brown testified that claimant is able to select the hours he wanted to work based on open shifts in the schedule. On more than one occasion during claimant's employment, the employer has offered him both full-time and part-time positions. Claimant declined these positions, as he preferred the flexibility of the per diem schedule.

During the hearing, the parties testified regarding the employer's definition of PRN employment. Claimant testified that he was cut from four different shifts in April 2017: April 4, April 9, April 15, and April 22. Lizabeth Buck notified claimant via email that he was cut from these shifts because of the employer's policy that PRN staff were not permitted to work more than 15 hours

per week. (Exhibit 1, email dated April 3, 2017 at 2:29 p.m. and email dated April 3, 2017 at 8:10 p.m.) Valencia followed up with claimant via email to clarify that he was not limited to working a certain number of hours. (Exhibit 1, email dated April 24, 2017 at 10:12 a.m.)

Claimant testified that he recently began his new semester in school. During the beginning of each semester, claimant voluntarily limits the amount of hours he works and the shifts he picks up with the employer. Claimant provided the schedule for April 30 through May 6, showing that the employer had shifts available on Sunday, Monday, Tuesday, Wednesday, and Friday of that week. Claimant did not report that he earned any wages that week. Claimant testified that he is currently searching for other employment in a hospital, in either a respite or direct care position. Claimant has not reported that he made any job contacts since he began filing for unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was totally unemployed for the week ending May 6, 2017. During the week ending May 6, 2017, claimant was not able and available for work. He was not totally unemployed or partially unemployed for the weeks ending April 8, April 15, April 22, April 29, or May 13, 2017. The issue of availability for work for these weeks is moot at this time. Benefits are denied.

Eligibility for Benefits – Able to Work and Availability for Work

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".

Total Unemployment and Partial Unemployment

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.

Was Claimant Totally 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.* The administrative record and the hearing testimony reflect that claimant was totally unemployed for the one-week period ending May 6, 2017. He performed no work during this week and he received and reported no wages. Therefore, claimant may be eligible for benefits during this one-week period. During each of the other weeks, claimant has performed services and earned wages for each week he has claimed benefits. The administrative law judge finds claimant was not totally unemployed for any week other than the week ending May 6, 2017.

Was Claimant Partially Unemployed?

The next question is whether she is partially unemployed. In order to be partially unemployed, an individual must be laid off from full-time employment or working less than his or her regular full-time work week. *Id.* If an individual is employed in a part-time position working the same hours and wages as contemplated at hire, he or she cannot be considered partially unemployed. Iowa Admin. Code r. 871-24.23(26). The claimant was hired into and requested a part-time position. She has worked part-time hours during her entire employment. Her hours have fluctuated as was the expectation when she was hired. She continues to work for the employer. As the claimant is working in a part-time job in the same hours and wages contemplated at hire or agreed to shortly thereafter, the claimant is not partially unemployed and is not eligible for benefits.

For the Week Ending May 6, 2017, Was Claimant Available for Work?

In order to receive benefits while totally unemployed, an individual must be able to work, available for work, and actively and earnestly seeking work. 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 Admin. Code r. 871-24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code r. 871-24.23(16) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

Claimant presented evidence that the employer had shifts available during the one-week period that he did not report any wages. Additionally, claimant did not report any job contacts with Iowa Workforce Development during this one-week period. Claimant has not established that he was available for work during the one-week period ending May 6, 2017. Benefits for that one-week period are denied. As the claimant was neither totally nor partially unemployed during the other weeks in which he claimed benefits, the issue of his availability for work during those weeks is moot at this time.

DECISION:

The April 28, 2017 (reference 01) unemployment insurance decision is modified in favor of the appellant, employer Community Neuro Rehab of Iowa, Inc. Claimant was totally unemployed for the one-week period ending May 6, 2017, but he was not able and available for work during that one-week period, and benefits are denied. Claimant was neither totally nor partially unemployed during the weeks ending April 8, April 15, April 22, April 29, and May 13, 2017, and benefits are denied. The issue of whether claimant was able and available for work during the weeks ending April 8, April 15, April 22, April 29, and May 13, 2017 is moot at this time.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn