

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**KIMBERLY K KRAMER**  
Claimant

**HY-VEE INC**  
Employer

**APPEAL 17A-UI-06719-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/07/17**  
**Claimant: Appellant (1)**

---

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:**

Kimberly K. Kramer (claimant) filed an appeal from the June 19, 2017, reference 02, unemployment insurance decision that denied benefits effective May 14, 2017, based upon the determination the claimant is still employed in the same hours and wages contemplated at hire and is not partially unemployed. The parties were properly notified about the hearing. The hearing notice only included the issues of whether the claimant was able to and available for work and whether the claimant was still employed at the same hours and wages. A telephone hearing was held on July 19, 2017. The claimant participated. Gwen Fowler, the claimant's sister, participated on her behalf. The employer participated through Human Resource Manager Keely McDonald and was represented by Keith Mokler of Corporate Cost Control. The parties agreed to waive notice on the issue of whether the claimant is entitled to partial unemployment insurance benefits under Iowa Code § 96.19(38)B. Claimant's Exhibit A was received.

**ISSUES:**

Is the claimant partially unemployed effective May 14, 2017?  
Is the claimant available for work effective May 14, 2017?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed part-time as a Clerk beginning on October 2, 2016. She works between 20 and 25 hours a week, but was never guaranteed a certain number of hours when she was hired. She is still employed in her position.

On March 27, 2017, the claimant needed time off work due to a medical issue. On Tuesday, May 2, 2017, her doctor released her back to work with a 40-pound lifting restriction. (Claimant's Exhibit A.) The claimant delivered her doctor's note to the Store Director the same day.

The employer makes its weekly schedules on Mondays which get posted for the employees to see on Fridays. When the claimant delivered her note, the employer had already created its schedule for the week that began May 7, 2017. The claimant was not scheduled for that week as the schedule had already been created. The claimant returned to work effective May 14, 2017 and worked 20.22 hours her first week back. She worked 23.57 hours the following week.

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

For the reasons that follow, the administrative law judge concludes the claimant is not partially or totally unemployed effective May 14, 2017. The issue of whether the claimant is able to or available for work effective May 14, 2017 is moot. Benefits are denied.

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 two-week period ending May 27, 2017 during which she filed claims for unemployment insurance benefits. She is not totally 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 a part-time position with no guaranteed hours. She has worked part-time hours during her entire employment. As the claimant is working in a part-time position in the same hours and wages contemplated at hire, the claimant is not partially unemployed and is not eligible for benefits.

As the claimant is not partially unemployed nor has she had any weeks of total unemployment since May 14, 2017, the issue of her ability to work and availability for work during this timeframe is moot.

**DECISION:**

The June 19, 2017, reference 02, unemployment insurance decision is affirmed. The claimant is not partially unemployed and benefits are denied effective May 14, 2017. If the claimant should become totally unemployed, she should notify Iowa Workforce Development. The issue of whether she is able to and available for work effective May 14, 2017 is moot.

---

Stephanie R. Callahan  
Administrative Law Judge

---

Decision Dated and Mailed

src/scn