

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

PENNY L ALBRIGHT
Claimant

APPEAL 19A-UCFE-00006-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

IRS/EQUIFAX
Employer

**OC: 12/23/18
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
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

Penny L. Albright (claimant) filed an appeal from the February 8, 2019, reference 01, unemployment insurance decision that denied benefits based upon the determination she was still employed with IRS (employer) in the same hours and wages. After due notice was issued, a telephone conference hearing was held on February 25, 2019 and consolidated with the hearing for appeal 19A-UI-00007-SC-T. The claimant participated. The employer did not respond to the hearing notice and did not participate. No exhibits were offered into the record.

ISSUES:

Is the claimant partially unemployed effective December 23, 2018?
Is the claimant available for work effective December 23, 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: The claimant works for the Federal Government as a full-time employee and her gross weekly wages are \$1,452.00. On December 22, 2018, the government shut down and the claimant was furloughed. She filed her claim for unemployment insurance benefits effective December 23 and her gross weekly benefit amount is \$467.00. The claimant returned to work on January 28, 2019 and has received back pay for the time she missed work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not partially or totally unemployed effective December 28, 2018. The issues availability for work and the chargeability of the employer's account are moot at this time. 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 did not perform services but she has since received wages for each of the weeks that she claimed unemployment insurance benefits. She is not considered totally unemployed during that time.

The next question is whether she is partially unemployed. In order to be partially unemployed, an individual cannot receive wages more than his or her weekly benefit amount plus fifteen dollars. *Id.* In this case, the claimant's gross weekly wage is more than \$482.00, or her weekly benefit amount plus fifteen dollars. Therefore she is not partially unemployed. Benefits are denied.

As the claimant is not considered unemployed, the issues of her availability for work and the chargeability of the employer's account are moot at this time.

DECISION:

The February 8, 2019, reference 01, unemployment insurance decision is affirmed. The claimant is not unemployed and benefits are denied. The issues of availability for work and the chargeability of the employer's account are moot at this time.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn