

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**STEPHEN F MARKHAM**  
Claimant

**APPEAL 15A-UI-13182-DL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DOWNTOWN EAGLE INC**  
Employer

**OC: 11/01/15  
Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Code § 96.19(38)b – Partial Unemployment  
Iowa Code § 96.7(2)a(2) – Same Base-Period Employment

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the November 19, 2015 (reference 01) unemployment insurance decision that denied benefits based upon not being able to or available for work. The parties were properly notified about the hearing. A telephone hearing was held on December 16, 2015. Claimant participated. Employer participated through store manager Rick Chapman.

**ISSUES:**

Is the claimant partially unemployed and available for work effective November 1, 2015?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a meat wrapper/cutter at \$14.20 per hour since September 13, 2010. In October 2014, when claimant applied for Social Security retirement benefits he met with Chapman and explained there is a salary cap after which benefits would be reduced and requested his hours be reduced from full-time to 2 days (16 hours) per week. Claimant sometimes went home early but also filled in for a person on maternity leave, who had been hired to fill his full-time position. When that person returned to full-time work, Chapman told claimant that business had declined so he reduced his hours to eight per week. Claimant then filed his unemployment insurance benefits claim effective November 1, 2015.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant is not partially unemployed.

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 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, 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.

An individual shall be deemed partially unemployed in any week in which 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(16) and (22) 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.

(22) Where a claimant does not want to earn enough wages during the year to adversely affect receipt of federal old-age benefits (social security).

The reduction of hours from full time to part time was initially triggered by claimant's inability to work or unavailability for the available hours due to receipt of Social Security benefits. Because he does not have full-time, regular employment base-period wages other than during the third quarter of 2014, he may not be considered partially unemployed or available for work.

**DECISION:**

The November 19, 2015 (reference 01) unemployment insurance decision is affirmed. The claimant is not partially unemployed and benefits are denied.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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