

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**MARIA CUBA**  
Claimant

**APPEAL NO. 17A-UI- 02521-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**D OF S FOODS INC**  
Employer

**OC: 01/15/17**  
**Claimant: Respondent (1)**

Iowa Code § 96.4-3 – Able and Available  
Iowa Code § 96.7(2)A(2) – Partial Benefits  
Iowa Code § 96.19(38)B – Employer Account Subject to Charges

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated February 24, 2017, reference 01, which held claimant able and available for work. After due notice, a hearing was scheduled for and held on April 14, 2017. Claimant participated personally and with attorney Lorraine Gaynor. Employer participated by Falon Sheer and Donny Thepvong. Claimant's Exhibits A through E and Employer's Exhibit 1 were admitted into evidence. Interpretive services were provided by CTS Language Link.

**ISSUES:**

Whether claimant is still employed at the same hours and wages?

Whether claimant is eligible to receive partial benefits?

Whether claimant is able and available for work?

**FINDINGS OF FACT:**

The claimant currently works for D of S Foods, a base period employer, part time. Claimant worked for employer 30-32 hours per week for a number of years while working for employer. In January of 2017, claimant's hours were reduced to no more than sixteen hours per week, although claimant had not changed her available hours or duties she was willing to do. Employer explained that claimant had taken some excused time off, and that employer had a new manager at the store.

For years claimant has had a work restriction that had been followed by employer. The restriction asked that claimant be kept from hot areas in the restaurant. Claimant stated that for years her job had been sandwich assembly, with additional work out front and dishwashing. Once the new manager came in, he stated that claimant would not accept hours offered out front or dishwashing. Employer and claimant gave differing testimony as to whether claimant was willing to take jobs outside of sandwich assembly. Claimant stated that she was only

offered jobs at the fryer or in other hot areas, and she refused those jobs, as per her work restriction.

**REASONING AND CONCLUSIONS OF LAW:**

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 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".

For the reasons that follow, the administrative law judge concludes the claimant is partially unemployed.

Claimant continued to be able and available for work every day after she returned from her excused absence. Employer decided unilaterally to diminish claimant's hours. It is the opinion of the administrative law judge that claimant continued to make herself available for all jobs she'd worked prior to her time off from work for illness. Because the claimant had consistently been working 30-32 hours for a number of years with a set schedule, the reduction of hours puts

claimant into a position where she is considered partially unemployed. Benefits are allowed based on those hours she is no longer working that she had historically worked.

**DECISION:**

The February 24, 2017, reference 01, decision is affirmed. The claimant is partially unemployed and benefits are allowed, provided claimant is otherwise eligible. The account of the current part-time employer shall be charged.

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Blair A. Bennett  
Administrative Law Judge

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Decision Dated and Mailed

bab/rvs