

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**HOLLY L DIXON**  
Claimant

**RED OAK DIESEL CLINIC INC**  
Employer

**APPEAL 18A-UI-08944-NM-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/01/18  
Claimant: Appellant (1R)**

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment  
Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Code § 96.7(2)a(2) – Same Base Period Employment  
Iowa Admin. Code r. 871-24.23(26) – Availability Disqualifications Same Hours and Wages

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the August 20, 2018, (reference 03) unemployment insurance decision that denied benefits effective July 22, 2018. The parties were properly notified about the hearing. A telephone hearing was held on September 13, 2018. Claimant participated and testified. Employer did not participate. Official notice was taken of the administrative record.

**ISSUES:**

Is the claimant totally or partially unemployed?

Is the claimant still employed at the same hours and wages?

Is the claimant able to work and available for work effective July 22, 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: Claimant began working for employer on November 6, 2017. Claimant was hired as a part-time employee, working between twenty and twenty five hours per week at a rate of \$10.00 per hour. Claimant worked as an intern, earning both wages and college credit as part of Department Approved Training from Iowa Workforce Development through the Trade Act. The administrative record shows claimant is approved for benefits through the Trade Act through July 28, 2018. Claimant graduated from school on July 27, 2018, but continued to work for this employer until the position ended on August 10, 2018.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not unemployed from July 22, 2018 through August 10, 2018 and is not eligible for benefits during this time frame.

Iowa Code section 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.

Because claimant was hired to work only part-time hours and was not guaranteed full-time hours, and the wage history consists of only part-time wages, the claimant is not considered to be unemployed within the meaning of the law. When an individual is hired to work part-time, the implied agreement is that full-time work will not be regularly available. Thus since the employer continues to provide regular part-time hours and is currently employed under the same hours and wages as contemplated at hire, she is not considered partially unemployed and is not eligible for benefits.

Because claimant is not unemployed and is not eligible for benefits, the issues regarding whether she is able to and available for work and whether the employer's account is subject to charge are moot and will not be discussed further in this decision.

**DECISION:**

The August 20, 2018, (reference 03) unemployment insurance decision is affirmed. The claimant is not partially unemployed and benefits are denied.

**REMAND:**

The administrative record shows claimant was approved for benefits under the Trade Act through July 28, 2018. It is not clear why benefits were denied effective July 22, 2018. The issue of whether claimant was eligible for benefits under the Trade Act for the week ending July 28, 2018 is therefore remanded to the Trade Department of Iowa Workforce Development for further investigation and determination.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

nm/rvs