

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**SUSAN A HECKMAN**  
Claimant

**LITHIA OF DES MOINES INC**  
Employer

**APPEAL 17A-UI-05020-NM-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/09/17  
Claimant: Respondent (2R)**

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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 – Same Base Period Employment

**STATEMENT OF THE CASE:**

The employer filed an appeal from the May 4, 2017, (reference 02) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on May 30, 2017. The claimant participated and testified. The employer participated through Hearing Representative Thomas Kuiper, Service Managers Tyler Van Weelden and Ryan Parmerlee, and Fixed Operations Manager Scott Long.

**ISSUES:**

Does the claimant meet the definition of being considered partially unemployed?

Is the claimant able to and available for work?

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: The claimant was hired to work part-time as a courtesy driver. At the time claimant was hired she was told the employer could not guarantee a set number of hours every week, but would allow her to work up to 60 hours per pay period as work was available. Claimant was given set hours one day a week and was on-call as work became available throughout the remainder of the week. Initially, claimant often worked between 43 and 60 hours per pay period. However, over the last four months of her employment, claimant's hours have averaged between 16 and 20 per pay period. The decrease in hours is due to more senior staff members becoming available for additional hours and the demand for courtesy driver services decreasing. Claimant has continued to work at least one day a week and is still on-call for additional work when it is available.

**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 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.

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 or in a temporary assignment, 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 or assignment placement, she is not considered partially unemployed.

**DECISION:**

The May 4, 2017, (reference 02) unemployment insurance decision is reversed. The claimant is not partially unemployed and benefits are denied.

**REMAND:**

The issue of whether claimant has been overpaid benefits must be remanded to the Iowa Workforce Development Benefits Bureau for initial investigation and determination.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

nm/rvs