

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DIAAEDDIN ABUSIN
Claimant

APPEAL 21A-UI-21615-S2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SYSTEMS UNLIMITED INC
Employer

OC: 08/01/21
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Able and Available
Iowa Code § 96.1A(37) – Partial Unemployment
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Part time, same hours and wages
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the September 23, 2021 (reference 01) unemployment insurance decision that denied benefits as of August 1, 2021, based on a finding claimant was still employed for the same hours and wages. The parties were properly notified of the hearing. A telephone hearing was held on November 18, 2021. Claimant Diaaeddin Abusin participated personally. Employer Systems Unlimited, Inc. participated through human resources manager Jenny O'Brien. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUES:

Is the claimant eligible for partial unemployment benefits beginning August 1, 2021?
Is claimant employed for the same hours and wages?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant has been employed part-time for this employer beginning November 12, 2016. He is employed as a part-time direct support professional. He was not guaranteed a certain number of hours each week when he was hired part-time. Claimant often picked up additional hours prior to the pandemic, and his working hours fluctuated between 20-40 hours per week.

In Spring 2020, claimant requested to work fewer hours from his employer due to concerns about contracting COVID-19. He also wanted the additional time off from work to study for upcoming medical exams. Employer agreed and claimant has since worked approximately 20-24 hours per week.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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", subparagraph (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)b provides:

As used in this chapter, unless the context clearly requires otherwise:

38. "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 § 96.7(2)a(2)a provides:

Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the *individual is receiving the same employment from the employer that the individual received during the individual's base period*, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

(emphasis added).

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.

Claimant worked on a part-time basis for employer. In order to be partially unemployed, an individual must be laid off from full-time employment or working less than his or her regular full-time work week. *Id.* If an individual is employed in a part-time position working the same hours and wages as contemplated at hire, he or she cannot be considered partially unemployed. Iowa Admin. Code r. 871-24.23(26). Claimant was hired into a part-time position with fluctuating hours. While he picked up additional hours when he wanted them, he remained a part-time employee throughout his employment. Additionally, claimant worked fewer hours when he also voluntarily reduced his own hours. As the claimant continued working in a part-time job in the same hours and wages contemplated at hire, the claimant is not partially unemployed and is not eligible for benefits.

DECISION:

The September 23, 2021 (reference 01) decision is affirmed. Claimant was still employed in his part-time job at the same hours and same wages as in his original contract of hire and was therefore not partially unemployed effective August 1, 2021.



Stephanie Adkisson
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December 28, 2021
Decision Dated and Mailed

sa/scn