

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAMES L DRAKE
Claimant

LYMAN RICHEY CORP
Employer

APPEAL 18A-UI-11080-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/31/17
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Availability Disqualifications
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 2, 2018, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on November 29, 2018. Claimant participated. Employer participated through human resource generalist Angela Conner.

ISSUES:

Is the claimant eligible for partial unemployment insurance benefits?
Is the claimant able to and available for work?
Is the claimant still employed at the same hours and wages?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: In 2013, employer hired claimant to work as a part-time loader/operator. In approximately 2015, claimant became a full-time employee when he also took on the duties of driving the mixer truck. In April 2018, claimant informed employer he no longer felt safe driving the mixer truck due to his age. Employer told claimant he could continue on as a loader/operator, but would only be scheduled to work up to 30 hours per week. Employer did not guarantee that claimant would be scheduled to work 30 hours per week. Claimant agreed to the arrangement.

In October 2018, employer reduced claimant's hours due to lack of work. Claimant reopened his claim effective October 14, 2018, at his supervisor's direction. Claimant has worked each week he has filed a weekly claim for benefits since filing the additional claim. However, he has worked less than 30 hours each of those respective weeks.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not partially unemployed effective October 14, 2018.

Iowa Code section 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 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 asked to work only part-time hours and was not guaranteed full-time hours, the claimant is not considered to be unemployed within the meaning of the law. When an

individual agrees 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 claimant is currently employed under the same hours and wages as contemplated when he made his request in April 2018, he is not considered partially unemployed.

DECISION:

The November 2, 2018, (reference 01) unemployment insurance decision is affirmed. The claimant is not partially unemployed and benefits are denied. If the circumstances change and claimant believes the disqualification can be removed, he should contact Iowa Workforce Development.

Christine A. Louis
Administrative Law Judge
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Decision Dated and Mailed

cal/scn