

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SHERRY L BRYANT

Claimant

VENUWORKS OF CEDAR RAPIDS

Employer

APPEAL NO. 21A-UI-14540-B2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/14/21

Claimant: Appellant (1)

Iowa Admin. Code r. 871-24.23(26) – Part-Time Worker – Same Wages and Hours

Iowa Code § 96.4-3 – Able and Available

Iowa Code § 96.7(2)A(2) – Partial Benefits

Iowa Code § 96.19(38) – Total and Partial Unemployment

871 IA Admin. Code – 24.22(2)(I) – On Call Worker

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated June 21, 2021, reference 01, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on August 20, 2021. Claimant participated personally. Employer participated by Michael Silva.

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?

Is the claimant an on call worker?

FINDINGS OF FACT:

The claimant currently works for Venuworks of Cedar Rapids, a base period employer, part time on call worker under the same terms and conditions as contemplated in the original contract of hire. Claimant also has other part time wages in the base period history.

Throughout claimant's two decade employment with employer, she has worked on an on-call basis, working for events employer has at their venues. Claimant is contacted through her union, and she then decides which events she wishes to work. Since March 2021 when she filed her new initial claim, claimant stated that her work had picked up recently. Claimant has not filed any weekly claims since filing her original claim in March.

REASONING AND CONCLUSIONS OF LAW:

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

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 the claimant was at all times relevant employed as an on-call part time worker, claimant has not guarantee of any hours. As there is no guarantee of hours, claimant cannot be seen as working different hours than she'd been working during the base period. Benefits are denied.

DECISION:

The June 21, 2021, reference 01, decision is affirmed. The claimant is not partially unemployed and benefits are denied.



Blair A. Bennett
Administrative Law Judge

August 25, 2021
Decision Dated and Mailed

bab/kmj