

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**LISA A RECKWARD**  
Claimant

**BLUE ROOF LLC**  
Employer

**APPEAL 18A-UI-00041-JCT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/01/17**  
**Claimant: Respondent (2R)**

Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment  
Iowa Code § 96.7(2)a – Same Base Period Employment

**STATEMENT OF THE CASE:**

The employer filed an appeal from the December 20, 2017, (reference 03) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on January 24, 2018. The claimant did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing. The employer participated through Lisa Roberson, owner. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**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 team member. She was not guaranteed a set schedule or amount of hours. The claimant presented the employer with limited availability because she also cared for her elderly mother. The claimant performed work for this employer from October 25, 2017, through December 19, 2017. The claimant permanently separated from employment on December 31, 2017. That separation has not been addressed at the claims level.

During the claimant's employment history, she did not work all available shifts. She called off work on November 13, 2017, stating she was sick. She then requested work off November 16, 17, 19, 20, 22, 24, 25, 26, 28 and 30, to care for her mother. She refused to work when called in for shifts on December 10 and 22, 2017, stating she had plans. She also was a no-call/no-show for her shifts on December 27 and 29, 2017.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not partially unemployed. The administrative law judge further concludes the reduction in hours worked by the claimant was due to her own restrictions to availability.

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.

Iowa Admin. Code r. 871-24.23(16) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

Because the claimant was employed under the same hours and wages as contemplated at hire, she is considered not partially unemployed. In this case, the employer hired the claimant part-time with no guarantee of hours. The claimant was working under the same hours and wages for which she was hired, until she permanently separated on December 31, 2017. The undisputed evidence presented is the claimant voluntarily restricted her employment on multiple occasions by being a no-call/no-show, stating she had plans, calling off sick and imposing severe restrictions to availability to care for her mother. The administrative law judge concludes that any limitation of hours was triggered by claimant's inability to work or unavailability for the available hours.

**REMAND:** The issues of permanent separation with the employer effective December 31, 2017, and whether the claimant has been overpaid benefits are remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

**DECISION:**

The December 20, 2017, (reference 03) unemployment insurance decision is reversed. The claimant is not partially unemployed and benefits are denied. **REMAND:** The issues of permanent separation with the employer effective December 31, 2017, and whether the claimant has been overpaid benefits are remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

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