

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SABRINA M WILCOX
Claimant

DEBORAH P ALLICK
Employer

APPEAL 16A-UI-10978-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 09/11/16
Claimant: Respondent (2R)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
Iowa Code § 96.19-38-b - Eligibility for Partial Unemployment Insurance Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated October 4, 2016 , reference 01, that concluded the claimant was eligible to receive partial unemployment insurance benefits and the employer's account was chargeable for benefits paid to the claimant since her hours and/or wages had been reduced. A telephone hearing was held on October 25, 2016. The parties were properly notified about the hearing. The claimant did not register a phone number with the Appeals Bureau and did not participate in the hearing. The employer was represented by James C. Holmes, attorney at law. Deborah Allick, owner, participated in the hearing on behalf of the employer.

The administrative law judge took official notice of the administrative records including the fact-finding documents and claimant's wage records. Employer exhibit 1 was received into evidence. 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:

Is the claimant able to work and available for work effective September 11, 2016?
Is the claimant eligible for partial unemployment insurance benefits?

FINDINGS OF FACT:

The claimant was hired for a first period of employment (which coincides with her base period) that ended mid-January due to the claimant voluntarily quitting. She worked part-time, at \$9 per hours. If there was additional catering, she would be offered additional hours. While the claimant appears to have requalified since this separation, no initial decision was issued on the separation.

The claimant then was hired for a second period of employment beginning July 18, 2016, and last performed work on September 1, 2016. The claimant was again hired part-time, generally

working the same shifts of 8:00 a.m. to 2:30 p.m. during the week, at the same rate of pay of \$9 per hour. She was not guaranteed hours.

During the course of the claimant's second period of employment, which began July 18, 2016, she missed work July 22, 28 and 29, August 15, 29, 30 and 31, and September 1 and 2, 2016 due to personal illness. Only twice during this period of employment, did the claimant complete all scheduled shifts. The claimant last performed work on September 1, 2016 when she left work ill due to illness. She called off work on September 2, 2016, and was unable to perform work the next week. On September 10, 2016, the claimant called the employer to inquire about her job status and was informed due to her unreliability and continued illness that she would be moved to an on-call status. The claimant's separation from part-time employment was effective September 10, 2016 and effective September 11, 2016, the claimant established an unemployment insurance claim. There has not been an initial decision issued on the September 10, 2016 separation.

Since the claimant's final week of employment on August 27, 2016 and at the onset of establishing the claimant's unemployment insurance claim, she has not established her ability or availability to perform work, in a part-time or on-call status. The employer reported the claimant is currently attending school, but had no other information available about the claimant's ongoing health issues. The claimant did not attend the hearing or offer any written statement or documentation in lieu of attending.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not partially unemployed and has not established she is able to and available for work.

Iowa Code § 96.19-38-b provides in part:

- b. An individual shall be deemed partially unemployed in any week in which, 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.

The preponderance of the evidence establishes the claimant's regular work week at the point she filed her new claim was zero hours per week because separation from part-time employment occurred. The claimant is therefore not eligible for partial unemployment insurance benefits based on her employment history with this employer.

In addition, the claimant has not established that she is able to and available for work, effective September 11, 2016.

Iowa Code § 96.5-1 provides:

An individual shall be disqualified for benefits:

- 1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Iowa Admin. Code r. 871-24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly

and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

For an individual to be eligible to receive benefits, he must be able to work, available for work, and actively seeking work as required by the unemployment insurance law. Iowa Code Section 96.4-3. The claimant has the burden to show she is able to work, available for work, and earnestly and actively seeking work. The unemployment insurance rules require that an individual be physically and mentally able to work in some full time gainful employment, not necessarily in the individual's customary occupation, but a job which is engaged in by others as a means of livelihood. 871 IAC 24.22(1). Given the claimant's history of excessive absenteeism related to illness in the weeks leading to the claimant's separation from employment, (as well as her schooling) in conjunction with the filing of her unemployment insurance claim, the credible evidence does not establish that the claimant met her burden of proof to establish her ability or availability to perform work in a part-time or on-call status. Accordingly, benefits are denied.

REMAND: The two separations from employment (including the separation that occurred in January 2016, and the separation from the second period of employment which ended September 10, 2016,) as delineated in the findings of fact are remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

REMAND: The issue of whether the claimant has been overpaid benefits is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

DECISION:

The October 4, 2016 (reference 01) decision is reversed. The claimant is not eligible for partial unemployment benefits. The claimant is not able to work and available for work effective September 11, 2016. Benefits are denied. **REMAND:** The claimant's two separations from employment during her two periods of employment with this employer, and the potential overpayment issue delineated in the findings of fact are remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/rvs