

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**RENAE M GRANT**  
Claimant

**RECOVER HEALTH SERVICES LLC**  
Employer

**APPEAL 17A-UI-04629-JP-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/19/17**  
**Claimant: Appellant (1)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.23(26) – Same Hours and Wages  
Iowa Code § 96.19(38)b – Partial Unemployment

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the April 20, 2017, (reference 01) unemployment insurance decision that denied benefits as of March 19, 2017. The parties were properly notified about the hearing. A telephone hearing was held on May 19, 2017. Claimant participated. Employer participated through office coordinator/personal administrator Suzette Harms. Employer exhibit one was admitted into evidence with no objection. Official notice was taken of the administrative record, including claimant's benefit payment history and wage history, with no objection.

**ISSUES:**

Is the claimant able to work and available for work effective March 19, 2017?

Is the claimant still employed at same hours and wages?

Is the claimant eligible to receive partial benefits?

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was hired to work full-time on November 4, 2013 as a home health aide. The employer considers "full-time" to be thirty or more hours per week. When claimant was hired, she was informed that the hours may fluctuate depending on the number of clients. The employer does not guarantee home health aides a set number of hours per week, only that they will be offered at least thirty hours per week. Claimant filed a claim for benefits with an effective date of March 19, 2017. The employer did have thirty or more hours of work available for claimant as contemplated in the original contract of hire.

Claimant's pay period is every two weeks. From January 1, 2017 through May 6, 2017, claimant averaged 29.81 hours of work per week (not including vacation and sick time). When vacation and sick time is included during this period, claimant averaged 32.25 hours per week.

From January 1, 2017 through May 6, 2017, claimant worked (vacation and sick time not included) the following hours per pay period:

January 1, 2017 to January 14, 2017 – 68.23 hours;  
January 15, 2017 to January 28, 2017 – 53.66 hours;  
January 29, 2017 to February 11, 2017 – 76.22 hours;  
February 12, 2017, to February 25, 2017 – 70.05 hours;  
February 26, 2017 to March 11, 2017 – 67.40 hours;  
March 12, 2017 to March 25, 2017 – 45.08 hours, claimant also had 16.00 more hours of vacation or sick time;  
March 26, 2017 to April 8, 2017 – 42.50 hours, claimant also had 8.00 more hours of vacation or sick time and at least three hours she declined to work;  
April 9, 2017 to April 22, 2017 – 59.17 hours, and client refused 9.00 hours of service during this period; and  
April 23, 2017 to May 6, 2017 – 54.25 hours, claimant also had 19.91 hours of vacation or sick time.

During this time period, claimant also requested to use vacation time and sick time. Employer Exhibit One. On March 13, 2017, claimant used 8.00 hours of vacation time. Employer Exhibit One. On March 20, 2017, claimant used 8.00 hours of vacation time. Employer Exhibit One. On March 27, 2017, claimant used 8.00 hours of sick time. Employer Exhibit One. Prior to March 31, 2017, claimant was working past 3:00 p.m.; however, on March 31, 2017, the employer offered claimant at least 3.00 hours to get her more hours, but she declined the hours and further restricted her availability by declining to accept any hours after 3:00 p.m. on Monday through Friday. Employer Exhibit One. On March 15, 2017, claimant requested vacation pay from April 28, 2017 through May 1, 2017; however, she only had 3.91 hours available. Employer Exhibit One. On April 25, 2017, claimant requested to use 16.00 hours of vacation time. Employer Exhibit One. On April 27, 2017, the employer offered claimant hours that could be done at any time during the day, but she declined the hours. Employer Exhibit One. Ms. Harms testified the employer always had thirty hours or more available for claimant each week.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant is not partially unemployed effective March 19, 2017.

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

**Benefit 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.

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(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.

Claimant was hired to work a minimum of thirty hours per week, but was not guaranteed a set number of hours per week. Claimant was aware her hours would fluctuate depending on the needs of the clients. Ms. Harms credibly testified the employer had a minimum of thirty hours available for claimant each week, but claimant would restrict her availability. Although claimant had worked past 3:00 p.m. during her employment, on March 31, 2017, she declined to work past 3:00 p.m. anymore. From January 1, 2017 through May 6, 2017, claimant averaged 32.25 hours per week (work, vacation, and sick time included).

Because claimant was hired to work a minimum of thirty hours per week and was not guaranteed a set number of hours over thirty per week, and the employer had a minimum of thirty hours per week available to claimant, she is not considered to be unemployed within the meaning of the law. Thus since the employer continues to provide claimant her regular hours and she is currently employed under the same hours and wages as contemplated at hire she is not considered partially unemployed. Benefits are denied.

**DECISION:**

The April 20, 2017, (reference 01) unemployment insurance decision is affirmed. Claimant is not partially unemployed and benefits are denied.

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Jeremy Peterson  
Administrative Law Judge

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Decision Dated and Mailed

jp/scn