

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MEGAN J IRWIN
Claimant

C&R NOVE LLC
Employer

APPEAL 16A-UI-08960-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/17/16
Claimant: Respondent (2-R)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(26) – Availability Disqualifications
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 August 11, 2016, (reference 03) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 2, 2016. Claimant did not participate. Employer participated through general manager Brant Nove.

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. Claimant began working for employer on May 2, 2016. She initially worked an average of 20 hour per week. On July 13, 2016, claimant's hours were reduced because she physically threatened a 14-year old team member who also worked on the night shift. During the second week of August 2016, claimant was moved to the day shift and was scheduled to work 19 hours that week. However, claimant resigned on August 11, 2016. The agency has not issued an initial decision on whether claimant's separation from employer disqualifies her from receiving benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not partially unemployed for the four weeks ending August 13, 2016.

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 § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

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 was hired to work only part-time hours and was not guaranteed full-time hours, and the wage history consists of only part-time wages, the claimant is not considered to be unemployed within the meaning of the law. When an individual is hired to work part-time, the implied agreement is that full-time work will not be regularly available. Thus, since the employer continued to provide regular part-time hours through the week ending August 13, 2016, under the same hours and wages as contemplated at hire, claimant is not considered partially unemployed through the week ending August 13, 2016.

DECISION:

The August 11, 2016, (reference 03) unemployment insurance decision is reversed. The claimant is not partially unemployed and benefits are denied through the week ending August 13, 2016.

REMAND:

This matter is remanded for an initial determination regarding whether claimant's separation from employer disqualifies her from receiving unemployment insurance benefits.

Christine A. Louis
Administrative Law Judge
Unemployment Insurance Appeals Bureau
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Des Moines, Iowa 50319-0209
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Decision Dated and Mailed

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