

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**SEAN P KELLEY**  
Claimant

**CITY OF DUBUQUE**  
Employer

**APPEAL 18R-UI-10906-CL-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/09/18**  
**Claimant: Appellant (1)**

---

Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Availability Disqualifications  
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment  
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the November 13, 2018, (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on November 19, 2018. Claimant participated. Employer participated through operations supervisor Jodi Johnson and personnel assistant Gina Noel.

**ISSUES:**

Is the claimant partially unemployed?  
Is the claimant still employed at the same hours and wages?  
Is the claimant able to and available for work?  
Is the employer's account subject to charge?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: On January 15, 2016, claimant began working for employer as a part-time bus operator.

Claimant last worked as a bus operator on August 8, 2018. On August 26, 2018, claimant was diagnosed with diabetes.

Claimant's personal medical provider released him to return to work on September 9, 2018. However, claimant was unable to pass a physical required by the United States Department of Transportation due to his recent diagnosis. Therefore, claimant cannot operate a bus at this time. Claimant is applying with the Department of Transportation to regain his approval to drive. He anticipates he will receive a decision at the end of November 2018.

Employer had a desk job available for claimant from September 20 through October 17, 2018. Claimant worked part-time hours during that time period.

Both parties consider claimant to still be employed, but he is not officially on medical leave as he does not meet the eligibility conditions.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is ineligible for benefits effective September 9, 2018.

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.

Claimant is not eligible for benefits from September 20 through October 17, 2018, as he was still employed in a part-time job during that time period and is not considered unemployed for purposes of determining whether he is eligible for unemployment insurance benefits.

Claimant is also ineligible during the time period he was not working at all since September 9, 2018.

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. 871-24.23(35) provides:

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

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

Claimant's medical condition is not work-related and he has not been released to return to work as a bus operator as he cannot pass his DOT-mandated physical at this time. While employer did provide some desk work when it was available, employer is not obligated to accommodate claimant's non-work related medical condition. Since claimant has not been released to return to work as a bus operator, he is not considered able to or available for work effective September 9, 2018.

**DECISION:**

The November 13, 2018, (reference 02) unemployment insurance decision is affirmed. The claimant is not able to work and available for work in his regular job effective September 9, 2018, and was not unemployed during the time period between September 20 and October 17, 2018. Benefits are withheld until such time as the claimant obtains a full medical release to return to work, offers his services to the employer, and no suitable, comparable work is available considering reasonable accommodation; or if he is separated through no fault of his own before that time.

---

Christine A. Louis  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515)478-3528

---

Decision Dated and Mailed

cal/scn