

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROSARIO WEBER
Claimant

IOWA CVS PHARMACY LLC
Employer

APPEAL 19A-UI-01555-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/13/19
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the February 14, 2019, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was not available for work, as she was not willing to work at times when her occupation is performed. The parties were properly notified of the hearing. A telephonic hearing was held on March 7, 2019. The claimant, Rosario Weber, participated. The employer, Iowa CVS Pharmacy, L.L.C., sent in written notice that it would not be participating in the hearing. The administrative law judge took official notice of the administrative record.

ISSUES:

Is the claimant totally unemployed effective January 13, 2019?
Is the claimant partially unemployed effective January 13, 2019?
Is the claimant able to and available for work effective January 13, 2019?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant is employed at CVS Pharmacy as a customer service employee. Claimant began her employment as a part-time customer service employee in October 2014. Within a year of her date of hire, claimant accepted the opportunity to work as a part-time pharmacy technician as well. Claimant worked some hours in the pharmacy and some hours in customer service. In September 2018, claimant stopped working as a pharmacy technician. This was due to claimant having difficulties getting to areas of the pharmacy other than the drive-up window and claimant having a conflict of personality with another employee. (Fact-Finding Worksheet) Claimant also elected to work part-time hours in order to help her daughter with childcare.

After September 2018, claimant was working approximately 20 hours per week as a part-time employee. Claimant worked Wednesdays, Saturdays, and Sundays. She was not guaranteed any hours. In January 2019, claimant dropped to nine hours per week for at least one week. This led her to file for unemployment insurance benefits. Claimant testified that she is now available to work Monday through Friday as well as the weekend. She works around her

childcare and other obligations, and she comes in to work whenever the employer calls her. Claimant recently renewed her pharmacy technician license and can now return to working in the pharmacy if she so desires.

Claimant earns \$13.12 per hour. Claimant's base period reflects full-time employment. In the fourth quarter of 2017, claimant averaged 31.4 hours per week. In the first quarter of 2018, claimant averaged 35.6 hours per week. In the second quarter of 2018, claimant averaged 28.8 hours per week. In the third quarter of 2018, claimant averaged 37.4 hours per week. During the lag quarter, the fourth quarter of 2018, claimant averaged 23.3 hours per week.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is not totally or partially unemployed. Benefits are withheld.

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(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.

Under Iowa Employment Security Law, an individual must be totally or partially unemployed to be eligible for benefits. Iowa Code § 96.19(38). Total unemployment is when someone has received no wages and performed no services during any given week. *Id.* In this case, the claimant has performed services and earned wages for each week she has claimed benefits. She is not totally unemployed.

The next question is whether she is partially unemployed. In order to be partially unemployed, an individual must be laid off from full-time employment or working less than his or her regular full-time work week. *Id.* If an individual is employed in a part-time position working the same hours and wages as contemplated at hire, he or she cannot be considered partially unemployed. Iowa Admin. Code r. 871-24.23(26). In September 2018, claimant voluntarily changed her contract of hire and opted for a part-time position. Since September 2018, her hours have fluctuated as is the expectation in a part-time position in which no hours are guaranteed. She continues to work for the employer. As the claimant is working in a part-time job in the same hours and wages agreed to in September 2018, the claimant is not partially unemployed and is not eligible for benefits.

As the claimant is not partially unemployed nor has she had any weeks of total unemployment, the issues of her availability for work and the chargeability of the employer's account are moot at this time.

DECISION:

The February 14, 2019, (reference 01) unemployment insurance decision is affirmed. Claimant is not totally or partially unemployed. Benefits are withheld. The issues of availability for work and the chargeability of the employer's account are moot at this time.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn