

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**CHELSEA R ROSS**  
Claimant

**RCR ENTERPRISES LLC**  
Employer

**APPEAL 17A-UI-01828-SC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/08/17**  
**Claimant: Respondent (2)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
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:**

RCR Enterprises, LLC (employer) filed an appeal from the January 24, 2017 (reference 01) unemployment insurance decision that allowed benefits based upon the determination Chelsea R. Ross (claimant) was temporarily laid off and considered to be able to and available for work during that time. The parties were properly notified about the hearing. A telephone hearing was held on February 24, 2017. The claimant did not respond to the hearing notice and did not participate. The employer participated through Human Resources Coordinator Kim Nilles and Scheduler/Care Manager Juan Soto. Employer's Exhibit 1 was received.

**ISSUES:**

Is the claimant able to and available for work?

Is the claimant partially unemployed and available for work effective January 8, 2017?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed part-time as a Personal Care Assistant beginning on February 12, 2015. She is still currently employed with the employer. The claimant works solely with one client at her request. The employer has other clients and shifts available; however, the claimant does not accept these hours. The claimant was not guaranteed any hours when she was hired and was told her hours would vary as it is dependent on client needs. The claimant earns \$11.00 an hour.

The claimant filed her original claim for benefits the week of January 8, 2017 with an additional date of January 29, 2017. She filed weekly claims for benefits for weeks ending February 4, 11, and 18, 2017. The claimant worked 11 hours during the week ending February 4, 27 hours during the week ending February 11, and 20 hours during the week ending February 18. She reported some wages earned when making her claim for benefits. The claimant's hours were slightly lower because the client's family had cancelled some of her shifts which is something

that happens regularly. The claimant was offered additional hours which she declined due to transportation issues and because she preferred overnight shifts.

The claimant's base period begins with the fourth quarter of 2015 and runs through the end of the third quarter of 2016. The claimant averaged the following hours per week over the four quarters: 31, 28.5, 24.7, and 39.

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

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

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 Admin. Code r. 871-24.22(2) provides, in relevant part:

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.

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f. Part-time worker, student--other. Part-time worker shall mean any individual who has been in the employ of an employing unit and has established a pattern

of part-time regular employment which is subject to the employment security tax, and has accrued wage credits while working in a part-time job. If such part-time worker becomes separated from this employment for no disqualifiable reason, and providing such worker has reasonable expectation of securing other employment for the same number of hours worked, no disqualification shall be imposed under Iowa Code section 96.4(3). In other words, if an individual is available to the same degree and to the same extent as when the wage credits were accrued, the individual meets the eligibility requirements of the law.

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(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.

The limitation of hours was triggered by claimant's unwillingness to work with other clients or her unavailability for the available hours. Because she does not have full-time base-period wages and the level of employment is consistent with the base-period wage history with this employer, she may not be considered partially unemployed and the availability for work is moot.

**DECISION:**

The January 24, 2017 (reference 01) unemployment insurance decision is reversed. The claimant is not partially unemployed and benefits are denied.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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