

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**RENEE L CARR**  
Claimant

**APPEAL 20A-UI-01398-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SC DATA CENTER INC**  
Employer

**OC: 01/05/20**  
**Claimant: Respondent (2R)**

---

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment  
Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

**STATEMENT OF THE CASE:**

The employer/appellant, SC Data Center Inc., filed an appeal from the February 11, 2020 (reference 02) Iowa Workforce Development (“IWD”) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on March 4, 2020. The claimant participated personally. The employer participated through Gabby Ludwig, HR Coordinator.

The administrative law judge took official notice of the administrative records. Employer Exhibit 1 was admitted into evidence. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Is the claimant eligible for partial unemployment insurance benefits?  
Is the claimant able to and available for work?  
Is the claimant still employed at the same hours and wages?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: In 2018, employer hired claimant to work as a part-time customer service representative IV. Employer did not guarantee a set number of hours each week. Claimant agreed to the arrangement. A review of Claimant’s weekly hours from November 2019 through December 30, 2019, reflect her hours fluctuated from 8.5 hours to 16 hours per week.

Claimant volunteered to take a layoff from this employer effective January 6, 2020. She anticipates she will return to work in September 2020 when the busier season picks up. The employer has shifts available to the claimant. This coincided with her filing her claim for unemployment insurance benefits. Besides working for this employer, she is also a part-time city council member.

The issue of the claimant’s January 5, 2020 separation from this employment due to a “voluntary layoff” has not yet been addressed by the Benefits Bureau.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant is not able and available for work effective January 5, 2020.

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 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(16) and Iowa Admin. Code r. 871-24.23(20) 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.

...

(20) Where availability for work is unduly limited because the claimant is waiting to be recalled to work by a former employer or waiting to go to work for a specific employer and will not consider suitable work with other employers.

Because claimant asked to work only part-time hours and was not guaranteed full-time hours, the claimant is not considered to be unemployed within the meaning of the law. When an individual agrees to work part-time, the implied agreement is that full-time work will not be regularly available. Thus since the employer continues to provide regular part-time hours and claimant is currently employed under the same hours and wages as contemplated when hired, she is not considered partially unemployed.

Further, claimant has chosen to restrict her availability of employment by volunteering not to perform work when work is available with this employer. Accordingly, the administrative law judge concludes the claimant is not able and available for work effective January 5, 2020. Benefits are denied.

The issues of overpayment and whether the claimant's January 5, 2020 separation from employment due to a "voluntary layoff" is disqualifying are remanded to the Benefits Bureau for an initial investigation and decision.

**DECISION:**

The February 11, 2020, (reference 02) unemployment insurance decision is reversed. The claimant is not partially unemployed. The claimant is also not able to and available for work due to restricting her employment availability. Benefits are denied.

**REMAND:** The issues of overpayment and whether the claimant's January 5, 2020 separation from employment due to a "voluntary layoff" is disqualifying are remanded to the Benefits Bureau for an initial investigation and decision.

---

Jennifer L. Beckman  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
Iowa Workforce Development  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax 515-478-3528

---

Decision Dated and Mailed

jlb/rvs