IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

68-0157 (9-06) - 3091078 - EI

LAURIE J CONLON
Claimant

USDA/EQUIFAX
Employer

APPEAL NO: 19A-UI-01341-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/30/18
Claimant: Appellant (4R)

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
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 **I**

STATEMENT OF THE CASE:

The claimant, Laurie J. Conlon, filed an appeal from the February 11, 2019, (reference 04) unemployment insurance decision that denied benefits based upon the determination she was still employed with USDA (employer) in the same hours and wages. The parties were properly notified about the hearing. A telephone hearing was held on March 1, 2019 and consolidated with the hearing for appeal 19A-UI-01342-JC-T. The claimant participated personally. The employer did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing. Claimant Exhibit A was admitted into evidence.

The administrative law judge took official notice of the administrative records including the fact-finding documents. 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 partially unemployed effective December 30, 2018?
Is the claimant available for work effective December 30, 2018?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began employment for this employer, USDA, as a program technician on June 1, 2018. She last performed work on December 27, 2018, when the employer told her that her position had been eliminated due to budget issues. The claimant's separation occurred at the same time as the federal shutdown, but was permanent, and not temporary. Her permanent separation effective December 27, 2018 has not yet been adjudicated by the Benefits Bureau.

The claimant has been able to, available for and earnestly seeking full-time work since separation. She has not refused any offers of work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is totally unemployed.

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.

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.* Since December 27, 2018, the claimant has performed no work and earned no wages. Accordingly, she is totally unemployed.

For an individual to be eligible to receive benefits, he must be able to work, available for work, and actively seeking work as required by the unemployment insurance law. Iowa Code

Page 3
Appeal No. 19A-UI-01341-JC-T

§ 96.4(3). The claimant has the burden to show he is able to work, available for work, and earnestly and actively seeking work. In this case, the evidence establishes the claimant is able to and available for work as defined by the unemployment insurance law. Accordingly, benefits are allowed, provided she is otherwise eligible.

REMAND: The claimant's permanent separation effective December 27, 2018 with USDA is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

DECISION:

The February 11, 2019, reference 04, initial decision is modified in favor of the claimant. The claimant is not partially unemployed, but totally unemployed. She is able to and available for work. Benefits are allowed, provided she is otherwise eligible. **REMAND:** The claimant's permanent separation effective December 27, 2018 with USDA is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

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Jennifer L. Beckman
Administrative Law Judge

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Decision Dated and Mailed

jlb/scn