

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEAN T HOFFERT

Claimant

APPEAL NO. 19A-UI-03246-B2

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALL-AMERICAN ARCHITECTURAL ARTS

Employer

OC: 03/31/19

Claimant: Appellant (1)

Iowa Admin. Code r. 871-24.23(26) – Part-Time Worker – Same Wages and Hours

Iowa Code § 96.4-3 – Able and Available

Iowa Code § 96.7(2)A(2) – Partial Benefits

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated April 16, 2019, reference 02, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held in-person on May 9, 2019. Claimant participated personally. Employer participated by Alaina Severino. Employer's Exhibits 1-3 and Claimant's Exhibits A-C were admitted into evidence.

ISSUES:

Whether claimant is still employed at the same hours and wages?

Whether claimant is eligible to receive partial benefits?

Whether claimant is able and available for work?

FINDINGS OF FACT:

The claimant currently works for All American Architectural Arts, a base period employer, part-time under the same terms and conditions as contemplated in the original contract of hire. Claimant was hired to be a part-time truck driver. Through the time she has driven for employer, there have been times when claimant has driven over thirty, and even over forty hours in a week. Employer lists as full-time workers who are working over forty hours a week, but they have to be designated as full-time employees.

Claimant went to employer when she was working upwards of forty hours a week and asked to be reclassified as a full-time employee. Employer did not reclassify claimant. Since the beginning of the year, claimant's weekly hours have dropped considerably. Whereas claimant had, at times, worked 40+ hours in a week last year, she is now working 20 or less hours per week, and at times much less.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not partially 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.

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.

Because the claimant is currently employed part-time under the same terms and conditions existing when claimant was hired and has never been guaranteed any amount of weekly hours, claimant is not considered partially unemployed. Benefits are denied.

DECISION:

The April 16, 2019, reference 02, decision is affirmed. The claimant is not partially unemployed and benefits are denied.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/scn