

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MILDRED E HENDERSON
Claimant

AKSHAYA IA CITY LLC
Employer

APPEAL 18A-UI-12114-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/18/18
Claimant: Appellant (4)

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 December 13, 2018 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant is still employed by this employer on the terms as contemplated in the contract of hire. The parties were properly notified of the hearing. A telephonic hearing was held on January 7, 2019. The claimant, Mildred Henderson, participated. The employer, Akshaya Iowa City, L.L.C., participated through Janelle Greer, Area Supervisor. Claimant's Exhibits A and B and Employer's Exhibit 1 was received and admitted into the record without objection. The administrative law judge took official notice of the administrative record.

ISSUES:

Is claimant totally unemployed effective November 18, 2018?
Is claimant partially unemployed effective November 18, 2018?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began employment with Akshaya Iowa City, L.L.C., in approximately March 2015. Claimant worked a full-time schedule for the employer at the outset of her employment. She worked every Monday, Tuesday, Wednesday, and Friday from 7:00 a.m. until 3:00 p.m. and she worked every other Saturday from 7:00 a.m. until 3:00 p.m. In October 2018, claimant's hours began being reduced and the new owners began taking over claimant's hours. For the week ending November 24, claimant only worked two days for a total of sixteen hours. For the week ending December 1, claimant worked two days for a total of twelve hours. Claimant has continued to work two days each week for a total of twelve hours each week since the week ending December 1, 2018. (Exhibit A)

Claimant earned \$11.25 per hour during all the quarters in her base period. Claimant's base period reflects average hours of between 26.5 hours per quarter and 32.7 hours per quarter. Claimant's weekly benefit amount is \$228.00. For the week ending November 24, 2018, claimant reported at least \$999.00 in wages. For the week ending December 1, 2018, claimant

reported \$137.00 in wages. For the week ending December 8, 2018, claimant reported \$138.00 in wages. For the week ending December 15, 2018, claimant reported \$145.00 in wages. For the week ending December 22, 2018, claimant reported \$246.00 in wages. For the week ending December 29, 2018, claimant reported \$144.00 in wages.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is partially unemployed, and benefits are allowed.

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). For the past two years, claimant has consistently been working full-time hours for the employer, varying between 32 per week and 40 per week. Since she started filing for benefits, claimant has only been working between twelve and sixteen hours per week. This is a drastic cut in hours attributable to the employer.

Claimant reported at least \$999.00 in wages for the week ending November 24, 2018. This is more than her weekly benefit amount plus fifteen dollars, and therefore she cannot be considered partially unemployed that week. Similarly, claimant reported \$246.00 in wages and vacation pay for the week ending December 22, 2018, which is more than her weekly benefit amount plus fifteen dollars. Therefore, she cannot be considered partially unemployed for that week either. Claimant worked less than her regular work week and earned less than her weekly benefit amount for the weeks ending December 1, December 8, December 15, and December 29, 2018, and partial benefits are allowed for those weeks.

DECISION:

The December 13, 2018 (reference 01) unemployment insurance decision is modified in favor of claimant/appellant. Claimant was partially unemployed for the weeks ending December 1, December 8, December 15, and December 29, 2018. Partial unemployment benefits are allowed for those weeks.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn