

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LUCINDA M MOORE
Claimant

SUNDANCE INC
Employer

APPEAL 17A-UI-12627-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 10/29/17
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Lucinda M. Moore (claimant) filed an appeal from the November 30, 2017, reference 03, unemployment insurance decision that denied benefits based upon the determination she is still employed and cannot be considered partially unemployed effective November 12, 2017. The parties were properly notified about a hearing on the issue of ability to and availability for work. A telephone hearing was held on January 2, 2018. The claimant participated. Sundance, Inc. (employer) participated through Area Coach and General Manager Laurie Robinson. Market Manager Tom Zuffa observed the hearing and was sworn in as a witness but did not provide any testimony. During the hearing, the parties agreed to waive notice on the issue of partial unemployment under Iowa Code section 96.19(38). No exhibits were offered into the record.

ISSUES:

Is the claimant partially unemployed effective November 12, 2017?
Is the claimant available for work effective November 12, 2017?
Is the claimant employed in the same hours and wages?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was hired to work as a Cashier approximately two years ago earning \$10.00 an hour. She was hired into a part-time position working 28-34 hours per week. The claimant's hours and schedule have varied throughout her employment but her usual days of work include Saturday and Sunday. The employer is closed on some major holidays, including Thanksgiving, and does not compensate its employees for the holiday.

The claimant mistakenly filed her claim for benefits effective October 29, 2017. She remained employed at her current levels of work that week and each week through the week ending November 18, 2017. The claimant reactivated her claim for benefits the week of November 12, 2017, but did not file a continued weekly claim for benefits that week and her claim closed.

The claimant worked 13 hours during the week beginning November 19, 2017 through November 25, 2017. The employer was closed on Thursday, November 23, 2017 for Thanksgiving. The claimant requested time off on Saturday, November 25, 2017, to go out of town with her family.

On November 27, 2017, the claimant attempted to file her continued weekly claim for benefits. However, her claim had closed due to the break in reporting. She made a request for retroactive benefits at that time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not partially or totally unemployed. The issue of whether she is able to and available for work is moot at this time. 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 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.

The claimant testified she was not partially or totally unemployed for any week except the week beginning November 19, 2017. 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 performed services and earned wages for the week she is seeking benefits. She was not totally unemployed.

The next question is whether she was partially unemployed for that week. 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 with variable hours, he or she cannot be considered partially unemployed. Iowa Admin. Code r. 871-24.23(26).

The claimant was hired into a part-time position. She has worked part-time hours during her entire employment. She continues to work for the employer. While the claimant worked fewer than her normal hours the week of November 19, it was due a holiday, which she normally would not work as the employer is closed, and because she requested to modify her schedule and take off work on Saturday, her normal work day. Therefore, the claimant was still employed at the same hours and wages contemplated at hire. As she is working in a part-time job in the same hours and wages as contemplated at hired, the claimant is not partially unemployed and is not eligible for benefits.

As the claimant was not totally or partially unemployed, the issue of her ability to and availability for work is moot at this time.

DECISION:

The November 30, 2017, reference 03, unemployment insurance decision is affirmed. The claimant is not partially unemployed and benefits are denied. The issue of her ability to and availability for work is moot at this time.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn