

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**GARY DEJONG**  
Claimant

**APPEAL 21A-UI-01040-ED-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HEART OF IOWA REGIONAL TRANSIT AG**  
Employer

**OC: 3/22/20**  
**Claimant: Appellant (2)**

Iowa Code § 96.4(3) – Able and Available  
Iowa Code § 96.19(38)B – Partial Unemployment  
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Part time, same hours and wages

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the December 10, 2020 (reference 01) unemployment insurance decision that found claimant was not eligible for unemployment benefits because he was still employed part-time whenever work was available. The parties were properly notified of the hearing. A telephone hearing was held on February 15, 2021. The claimant, Gary Dejong, participated personally. The employer, Heart of Iowa Regional Transit AG, participated through witness Brooke Ramsey. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

**ISSUES:**

Is the claimant eligible for partial unemployment benefits?  
Is claimant employed for the same hours and wages?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The facts in this matter are undisputed. Claimant was employed full-time for this employer. He remains employed today. Claimant is a bus driver. Claimant's hours were changed to part-time hours because the employer had less work available for him. From March 2020 until February 2021, the employer did have full-time work available for the claimant as contemplated in the original contract of hire and as established by the base period work history.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant is partially unemployed effective March 22, 2020.

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 § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 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 Code § 96.7(2)a(2)(a),(b), and (c) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and § 96.8, subsection 5.

- (b) An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding § 96.8, subsection 5.
- (c) The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under § 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under § 85.33, § 85.34, subsection 1, or § 85A.17, or responsible for paying indemnity insurance benefits.

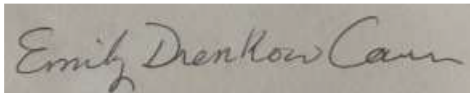
Claimant's base period wages show:

2019/3 = \$8355.02  
2019/2 = \$7316.40  
2019/1 = \$7385.70  
2018/4 = \$6535.20

The claimant is not currently employed under the same hours and wages as contemplated at hire and he is not receiving the same employment from the employer that the individual received during the individual's base period, therefore, he is considered partially unemployed. Benefits may be allowed based upon reporting of weekly earnings.

**DECISION:**

The December 10, 2020, (reference 01) unemployment insurance decision is reversed. The claimant is partially unemployed and benefits are allowed, provided he is otherwise eligible. He is required to report gross wages earned for each week of benefits claimed.



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Emily Drenkow Carr  
Administrative Law Judge

February 25, 2021  
Decision Dated and Mailed

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