

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JOHN A LONG**  
Claimant

**APPEAL 16A-UI-05866-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DAVENPORT BOWLERS LLC**  
Employer

**OC: 05/01/16  
Claimant: Respondent (2-R)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Code § 96.19(38)B – Partial Unemployment Availability  
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

**STATEMENT OF THE CASE:**

Davenport Bowlers LLC (employer) filed an appeal from the May 19, 2016, (reference 01) unemployment insurance decision that allowed benefits based upon the determination John A. Long (claimant) is eligible for partial unemployment as he is working on a part-time or on-call basis while available for his normal hours of work. The parties were properly notified about the hearing. A telephone hearing was held on June 10, 2016. The claimant participated personally. The employer participated through Owner Susan Lorseld. Employer's Exhibit 1 was received. Official notice was taken of the administrative record, specifically the claimant's database readout (DBRO), wage history, and continued claims history.

**ISSUES:**

Does the claimant meet the definition of being considered partially unemployed?

Is the claimant able to and available for work?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed by this employer full-time as a Mechanic beginning on February 9, 2015. He was hired by the previous owner approximately six years prior. The claimant was hired to work 40 hours a week, with opportunities for overtime and an understanding that his hours might drop in the summer, or May through August, due to business needs. The claimant is employed at \$10.00 an hour. The majority of his hours are worked on Friday, Saturday, and Sunday. He is consistently scheduled and works 32 to 40 hours each week during the summer months.

He filed his current claim for unemployment benefits the week of May 1, 2016. His current weekly benefit amount is \$252.00. The employer's payroll week is calculated Monday to Sunday; whereas, the week for unemployment insurance benefits is Sunday to Saturday. For the employer's payroll week ending May 8, 2016, the claimant worked 33.43 hours; week

ending May 15, 2016, he worked 33.17 hours; and week ending May 22, 2016, he worked 34.09 hours. (Employer's Exhibit 1). For the unemployment benefits week beginning May 1, 2016 through the week ending May 7, 2016, the claimant worked 21.93 hours from Monday to Saturday. The hours he worked that Sunday are unknown as they were recorded on a previous employer payroll week and not included in Employer's Exhibit 1. The administrative record shows the claimant reported no wages earned that week when he filed his continuing claim for benefits. During the unemployment benefits week beginning May 8, 2016 and ending May 14, 2016, the claimant worked 37.77 hours and earned gross wages in the amount of \$377.70. The administrative record shows he reported a total of \$156.00 in wages earned that week when filing his continuing claim for benefits. For the unemployment benefits week beginning May 15, 2016 and ending May 21, 2016, the claimant worked 33.51 and earned gross wages in the amount of \$335.10. The administrative record shows he reported a total of \$125.00 in wages earned that week when filing his continuing claim for benefits.

The claimant's base period consists of four calendar quarters. May and June are included in the second quarter and July and August are in the third quarter. The administrative record shows that in the second quarter of 2015 the claimant earned wages in the amount of \$4,221.00 and in the third quarter he earned wages in the amount of \$5,815.00. There are typically 13 weeks per quarter. At a pay rate of \$10.00 an hour, the claimant averaged 32.5 hours a week in the second quarter and 39.5 hours in the third quarter of 2015.

#### **REASONING AND CONCLUSIONS OF LAW:**

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

In order to be eligible for benefits, the claimant has to work less than his regular full-time week and earn wages less than his weekly benefit amount plus \$15.00. The claimant was hired to work varying full-time hours with the understanding that there would be fewer hours available in the summer. These hours have been consistent throughout his employment as evidenced by his wage history. Since the employer continues to provide regular hours and he is currently employed under the same hours and wages as contemplated at hire, he is not considered partially unemployed. The claimant is also currently earning gross wages greater than his weekly benefit amount plus \$15.00. Accordingly, benefits are denied.

**DECISION:**

The May 19, 2016, (reference 01) unemployment insurance decision is reversed. The claimant is not partially unemployed and benefits are denied.

**REMAND:**

There is a discrepancy between the wages and hours reported by the employer and the wages reported by the claimant to Iowa Workforce Development. The discrepancy is remanded to Investigation and Recovery for an investigation and determination.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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