

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ROBERT E COURTNEY**  
Claimant

**JAY SHREE GANESH LLC**  
Employer

**APPEAL 19A-UI-02339-SC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/17/19**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Robert E. Courtney (claimant) filed an appeal from the March 13, 2019, reference 01, unemployment insurance decision that denied benefits based upon the determination he was still employed in his on-call position with Jay Shree Ganesh, LLC (employer). After due notice was issued, a telephone conference hearing was held on April 3, 2019. The claimant participated. The employer did not respond to the hearing notice and did not participate. The Claimant's Exhibit A was admitted into the record.

**ISSUES:**

Is the claimant able to work and available for work effective February 17, 2019?  
Does the claimant meet the definition of being considered partially unemployed?  
If so, is the employer's account liable for potential charges?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant worked as a part-time employee for 30 hours a week. On January 23, 2018, when the employer bought the business where the claimant worked, the new owner told the claimant that his hours would begin to vary based on business need. However, when the claimant objected stating he would need to find another job, the employer continued to schedule him for the same 30 hours a week he had worked for the previous employer.

The claimant went on medical leave in September 2018. He was released to return to work without restrictions on January 2, 2019. The employer told the claimant it did not want to return him to his regular hours right away and the hotel was slow for the season. The employer began scheduling the claimant to work 15 hours a week.

The claimant filed his claim for benefits effective February 17, 2019 and reopened his claim effective March 3, 2019. The claimant's weekly benefit amount is \$242.00. The claimant has

earned wages ranging from \$170.00 to \$216.00 each week he has filed a weekly continued claim.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant is partially unemployed and the employer cannot be relieved of charges.

Iowa Code section 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 section 96.19(38) provides:

Definitions.

38. 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 section 96.7(2)a(2)(a), (b), and (c) provides:

Employer contributions and reimbursements.

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 section 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 section 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 section 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 section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

The claimant was hired for and consistently worked 30 hours a week. The claimant is currently working less than his regular work week and earning weekly wages less than his weekly benefit amount plus fifteen dollars. Because the claimant does not have other base period wages and the level of employment is not consistent with the base period wage history with this employer, he may be considered partially unemployed and this employer may be liable for benefit charges. Benefits are allowed.

For any week of benefits claimed, the claimant must report gross wages earned that week to establish whether or not he is eligible for partial unemployment benefits.

**DECISION:**

The March 13, 2019, reference 01, unemployment insurance decision is reversed. The claimant is partially unemployed and benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid to claimant, provided he is otherwise eligible. The claimant should report gross wages for the week in which they are earned for the purpose of establishing continuing eligibility for partial unemployment benefits.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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