

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**SARAH K WATSON**  
Claimant

**THE VIEWS OPERATOR C LLC**  
Employer

**APPEAL 18A-UI-09992-DB-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/02/18**  
**Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Able and Available  
Iowa Code § 96.19(38)b – Partial Unemployment

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the September 27, 2018 (reference 01) unemployment insurance decision that found claimant was not eligible for unemployment benefits effective September 2, 2018 because she was not willing to work the number of hours required in her occupation. The parties were properly notified of the hearing. A telephone hearing was held on October 26, 2018. The claimant, Sarah K. Watson, participated personally. The employer, The Views Operator C LLC, participated through witness Telissa Jacobs. The administrative law judge took official notice of the claimant's unemployment insurance benefits records including the fact-finding documents.

**ISSUES:**

Is the claimant able to work and available for work effective September 2, 2018?  
Is the claimant totally or partially unemployed?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant began working for this employer on June 6, 2016. She was hired as a full-time certified nursing assistant ("CNA"). Claimant's working hours consisted of working nine days out of a 14-day pay period. She would work five days one week (40 hours) and four days the following week (32 hours). Claimant typically worked from 6:00 a.m. to 2:00 p.m.

On June 11, 2017, claimant was promoted to a dietary supervisor. Her rate of pay increased to \$14.00 per hour and her hours changed to 40 hours per week, plus some overtime. Claimant was required to complete management training within one year of her promotion to supervisor. Claimant failed to complete management training within one year of her promotion to supervisor. As such, the employer removed the claimant from her position as dietary supervisor and offered her to continue employment as a cook or CNA. Claimant accepted a position as CNA.

As of September 2, 2018, claimant began working nine days out of a 14-day pay period again. Her work schedule as a CNA was once again 40 hours during one week and 32 hours the next

week. There are additional shifts available each week that claimant can work if she signed up for the shifts. Her rate of pay was reduced to \$13.00 per hour.

Claimant filed an initial claim for benefits effective September 2, 2018. She has reported various amounts of gross wages earned each week when she has filed her weekly-continued claims for benefits. The amount of gross wages reported by the claimant for each weekly-continued claim is inconsistent with the testimony of both parties. However, no overpayment of benefits has accrued to date.

For the week-ending September 8, 2018 claimant worked 40 hours.

For the week-ending September 15, 2018 claimant worked 24 hours but was scheduled to work 32 hours. Claimant was absent from work on September 13, 2018 due to illness.

For the week-ending September 22, 2018 claimant worked 32 hours but was scheduled to work 40 hours that week. Claimant was absent from work on September 21, 2018.

For the week-ending September 29, 2018 claimant worked 29 instead of her regular 32 hours because the employer reduced her schedule by three hours due to lack of work. There were additional shifts available for the claimant to work if she signed up for the shifts.

For the week-ending October 6, 2018 claimant worked 30 hours. Her work schedule was reduced by two hours that week due to lack of work. There were additional shifts available for the claimant to work if she signed up for the shifts.

For the week-ending October 13, 2018 claimant worked 30 hours instead of her normal 32 hours because the employer reduced her schedule by two hours. There were additional shifts available for the claimant to work if she signed up for the shifts.

For the week-ending October 20, 2018 claimant worked 42 hours because she picked up an extra shift on October 20, 2018.

On September 14, 2018, the employer offered for claimant to work five days per week at eight hours per day. This offer was for the same pay and job position. This was due to another employee leaving the employer and a position becoming available. Claimant refused the offer because she wanted her schedule to be flexible so that she could decide what dates she would pick up additional hours/shifts.

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

For the reasons that follow, the administrative law judge concludes as follows:

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 Admin. Code r. 871-24.23(16) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

Iowa Admin. Code r. 871-24.23(23) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

First, the claimant has never been totally unemployed in any week with respect to which no wages were payable to her. As such, she is not totally unemployed.

The next issue is whether the claimant has been partially unemployed in any week and whether the claimant is available for work. Partial unemployment requires the individual to work less than the regular full-time week and earn less than the individual's weekly benefit amount plus fifteen dollars. Claimant's regular full-time week consists of 40 hours one week and then 32 hours the following week, for a total of 72 hours in a pay period.

For the week-ending September 8, 2018 claimant worked 40 hours and is not considered to be partially unemployed. Benefits are denied for that week.

For the week-ending September 15, 2018 claimant worked a reduced regular work week because she was absent from work due to illness. This reduction was not due to lack of work. Claimant was not partially unemployed. Benefits are denied for that week.

For the week-ending September 22, 2018 claimant worked a reduced regular work week because she was absent from work. This reduction was not due to lack of work. Claimant was not partially unemployed. Benefits are denied for that week.

For the week-ending September 29, 2018 claimant worked 29 instead of her regular 32 hours because the employer reduced her schedule by three hours due to lack of work. However, additional shifts were available for the claimant to work and claimant chose not to work the additional shifts. Further, claimant failed to accept a five-day workweek when it was offered to her on September 14, 2018. Benefits are denied for that week as the claimant was not willing to work the number of hours in which suitable work for her was available.

For the week-ending October 6, 2018 claimant worked 30 hours. Her work schedule was reduced by two hours that week due to lack of work. However, additional shifts were available for the claimant to work and claimant chose not to work the additional shifts. Further, claimant failed to accept a five-day workweek when it was offered to her on September 14, 2018. Benefits are denied for that week as the claimant was not willing to work the number of hours in which suitable work for her was available.

For the week-ending October 13, 2018 claimant worked 30 hours instead of her normal 32 hours because the employer reduced her schedule by two hours. However, additional shifts were available for the claimant to work and claimant chose not to work the additional shifts. Further, claimant failed to accept a five-day workweek when it was offered to her on September 14, 2018. Benefits are denied for that week as the claimant was not willing to work the number of hours in which suitable work for her was available.

For the week-ending October 20, 2018 claimant worked 42 hours because she picked up an extra shift on October 20, 2018. As such, claimant was not partially unemployed. Benefits are denied for that week.

**DECISION:**

The September 27, 2018 (reference 01) decision is affirmed. Benefits are denied effective September 2, 2018. Claimant is not totally or partially unemployed and is not available for work as she is not willing to work the number of hours in which suitable work for her is available.

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Dawn Boucher  
Administrative Law Judge

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Decision Dated and Mailed

db/rvs