

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARK C MORIARTY
Claimant

JOHN DEERE CEC – DUBUQUE WORKS
Employer

APPEAL 17A-UI-06016-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/07/16
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Admin. Code r. 871-24.23(26) – Employed at Same Hours and Wages

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 5, 2017 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was not eligible for unemployment insurance benefits because he was still employed. The parties were properly notified of the hearing. A telephone hearing was held on June 28, 2017. The claimant, Mark C. Moriarty, participated. The employer, John Deere CEC – Dubuque Works, did not register a telephone number at which to be reached and did not participate in the hearing.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant has worked for this employer since 2011. He is currently a full-time assembler. During late April and early May 2017, the employer had two one-week layoffs. Claimant returned from his second one-week layoff the week of May 14, 2017. He has been working since then.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was neither totally nor partially unemployed effective May 14, 2017.

Eligibility for Benefits – Able to Work and Availability for Work

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".

Total Unemployment and Partial Unemployment

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.

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.* The administrative record and the hearing testimony reflect that claimant returned from layoff and was working full-time effective the week beginning May 14, 2017. As of that week, claimant was not unemployed. Therefore, benefits are denied effective May 14, 2017. The administrative law

judge advises claimant to contact his local Iowa Workforce Development office if he learns of another temporary layoff to ensure he will receive benefits for that layoff period.

DECISION:

The June 5, 2017 (reference 01) unemployment insurance decision is affirmed. Claimant was not unemployed, either totally or partially, effective May 14, 2017. Benefits are denied.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn