

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**TRENT D BUCKELS**

Claimant

**APPEAL 18A-UI-03545-JP**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PEPPERS GRILL & SPORTS PUB INC**

Employer

**OC: 12/17/17**

**Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Code § 96.19(38)b – Partial Unemployment  
Iowa Admin. Code r. 871-24.23(26) – Same Hours and Wages

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the March 9, 2018, (reference 04) unemployment insurance decision that denied benefits as of February 18, 2018. An in-person hearing was held on March 21, 2018 at 3420 University Avenue, Suite A, in Waterloo, Iowa. During the hearing, both parties waived proper notice for this hearing and for the following potential issues: Iowa Code § 96.4(3) (Ability to and Availability for Work - Is the claimant able to and available for work effective February 18, 2018?), Iowa Code § 96.19(38)b (Partial Unemployment - Is the claimant eligible to receive partial benefits?), and Iowa Admin. Code r. 871-24.23(26) (Same Hours and Wages - Is the claimant still employed at the same hours and wages?). Claimant participated. Employer participated through managing partner Steve Plummer. Claimant Exhibit A was admitted into evidence with no objection. Official notice was taken of the administrative record with no objection.

**ISSUES:**

Is the claimant able to and available for work effective February 18, 2018?

Is the claimant eligible to receive partial benefits?

Is the claimant still employed at the same hours and wages?

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was hired as a part-time dish person on December 8, 2016. Claimant is still employed with the employer. When claimant was hired, the employer did not guarantee him a set number of hours each week. The employer does not guarantee hours for part-time employees.

From the time claimant was hired until around December 9 or 10, 2017, the employer usually scheduled claimant four shifts per week. A shift is typically six or seven hours. Around

December 9 or 10, 2017, the employer determined that it did not believe claimant could keep up with his job duties. The employer did not give claimant any official disciplinary warnings regarding his job performance. Around December 9 or 10, 2017, Cody, an assistant general manager, told claimant that he thought the job was getting too much for claimant and the employer decided to reduce his schedule from four shifts per week to three shifts per week. Claimant's job duties and pay rate did not change.

From December 9 or 10, 2017, the employer consistently scheduled claimant three shifts a week until around March 11, 2017. During this time period, claimant did not work his scheduled shifts on multiple occasions. On March 11, 2017, the employer reduced claimant's shifts again. The employer reduced claimant's shifts from three shifts per week to two shifts per week, because it thought claimant had accepted a new job and was only available two nights a week. Claimant's job duties and pay rate did not change. Claimant testified at the hearing that he did not get the job. The employer had three shifts available for claimant.

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

For the reasons that follow, the administrative law judge concludes claimant is still employed in his part-time job at the same hours and wages as in his original contract of hire and is therefore not partially unemployed as of February 18, 2018. Benefits are denied.

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:

*"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.

Claimant is a part-time employee for the employer. Claimant's argument that when he was hired he was guaranteed four shifts per week is not persuasive. Mr. Plummer credibly testified that claimant was not guaranteed a set number of hours per week. Mr. Plummer further credibly testified that the employer does not guarantee any part-time employees a set number of hours. Although starting in December 2017 the employer reduced the number of shifts claimant received per week, the employer never guaranteed him a set number of hours. Therefore, because claimant was not guaranteed a set number of hours, claimant is still considered to be employed in his part-time job at the same hours and wages as contemplated in his original contract of hire. Furthermore, since claimant does not have full-time base-period wages and the level of employment is consistent with the base-period wage history with this employer, he may not be considered partially unemployed. As such, benefits are denied as of February 18, 2018.

**DECISION:**

The March 9, 2018, (reference 04) unemployment insurance decision is affirmed. Claimant is still employed in his part-time job at the same hours and wages as in his original contract of hire and is therefore, not partially unemployed as of February 18, 2018. Benefits are denied.

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Jeremy Peterson  
Administrative Law Judge

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Decision Dated and Mailed

jp/rvs