

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ROBERT A WEYHRAUCH**  
Claimant

**RGIS LLC**  
Employer

**APPEAL 16A-UI-13518-JP-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/27/16**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the December 15, 2016, (reference 01) unemployment insurance decision that denied benefits as of November 27, 2016. The parties were properly notified about the hearing. A telephone hearing was held on January 12, 2017. Claimant participated. Employer did not participate. Official notice was taken of the administrative record of claimant's wage history and benefit payment history.

**ISSUES:**

Is the claimant able to work and available?

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 to work as an inventory auditor. Claimant worked variable hours for the employer, but he usually worked thirty or more hours a week. In November and December the employer experiences a seasonal slowdown. In November 2016, work slowed down from the employer.

The week beginning November 27, 2016, claimant's hours were reduced. Claimant's initial schedule for the week beginning November 27, 2016 was for two hours of training. The employer then added a store for claimant to work in, which was for less than eight hours, for the week beginning November 27, 2016 and the employer canceled the scheduled training. Claimant worked less than eight hours the week beginning November 27, 2016. The week beginning December 4, 2016, claimant worked 12.85 hours for the employer. The week beginning December 11, 2016, claimant worked two hours of training, but no hours in a store. The week beginning December 18, 2016, claimant worked 3.58 hours for the employer.

On December 20, 2016, claimant had surgery. After surgery, claimant was precluded from working until a future date. Claimant's doctor has not released him to return to work. Claimant

will be reassessed by his doctor on Tuesday, January 17, 2016. The employer is aware claimant is unable to work. The employer has not scheduled claimant to work since his surgery. Prior to the surgery, claimant worked all the hours that the employer offered him. Prior to the slowdown, claimant was averaging close to thirty hours a week. Starting the week beginning November 27, 2016, claimant was offered and worked less than half of what he had normally been working.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant is partially unemployed effective November 27, 2016.

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 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:

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 normally averaged around thirty hours or more per week. Starting the week beginning November 27, 2016, claimant's hours were cut by at least half. Because claimant is not currently employed under the same hours and wages as contemplated at hire, he is considered partially unemployed. Benefits may be allowed based upon reporting of weekly earnings effective November 27, 2016.

**DECISION:**

The December 15, 2016, (reference 01) unemployment insurance decision is reversed. Claimant is partially unemployed and benefits are allowed effective November 27, 2016, provided he is otherwise eligible. Claimant is required to report gross wages earned for each week of benefits claimed.

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Jeremy Peterson  
Administrative Law Judge

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Decision Dated and Mailed

jp/rvs