

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**CHRISTIANE L DEAN**  
Claimant

**ACOSTA INC**  
Employer

**APPEAL 19A-UI-09202-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/22/19**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Christiane Dean (claimant) appealed a representative's October 18, 2019, decision (reference 04) that concluded she was not eligible to receive unemployment insurance benefits as of September 22, 2019, because she was still employed with Acosta (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 17, 2019. The claimant was represented by her mother, Teresa Trettin, and participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing. The administrative law judge took official notice of the administrative file.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired in October 2013, as a part-time merchandiser. She works eight hours per week and earns \$10.00 per hour. She also works for Advantage Sales and Marketing part-time worker. She earns approximately \$120.00 per week from Advantage. The claimant earns \$200.00 per week.

The claimant was separated from her twenty-five hour per week job at Sunbeam Christian Childcare on September 25, 2019. She filed for unemployment insurance benefits with an effective date of September 22, 2019. Her weekly benefit amount is \$170.00 per week.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant is partially unemployed and the part-time employer is relieved of benefit 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:

"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.

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). The claimant's weekly benefit amount plus fifteen dollars is \$185.00. She is earning \$200.00 per week. The claimant is earning more than her weekly benefit amount plus fifteen dollars. Partial benefits are denied.

**DECISION:**

The October 18, 2019, reference 04, decision is affirmed. The claimant is not partially unemployed. Benefits are denied.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/scn