

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MERLE L CLARK
Claimant

A1 CABINET & GRANITE LLC
Employer

APPEAL 18A-UI-10797-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/28/18
Claimant: Respondent (2)

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(26) – Availability Disqualifications Same Hours and Wages
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

A1 Cabinet & Granite, LLC (employer) filed an appeal from the October 26, 2018, reference 03, unemployment insurance decision that allowed benefits based upon the determination Merle L. Clark (claimant) is partially unemployed. A telephone conference hearing was held on November 15, 2018. The hearing notice mailed to the claimant's last known address of record and was returned as undeliverable to the Appeals Bureau. RR, a clerk in the Appeals Bureau, contacted the claimant at the phone number he has on file with Iowa Workforce Development (IWD) and left a voice message. The claimant did not return RR's call. The employer participated through Co-Owner Sammy Lin. Mandarin interpretation was provided by Wiyan (employee number 10777) from CTS Language Link. The Employer's Exhibits 1 and 2 were admitted into the record.

ISSUE:

Is the claimant partially unemployed effective October 14, 2018?
Is the claimant available for work effective October 14, 2018?
Is the employer's account subject to charge?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed his claim for benefits effective January 28, 2018 and his base period includes the fourth quarter of 2016 through the third quarter of 2017. During his base period, the claimant averaged 37 hours a week for the fourth quarter of 2016; 29.2 hours a week for the first quarter of 2017; 27.6 hours a week for the second quarter of 2017; and, 27.5 hours for the third quarter of 2017. The claimant's weekly benefit amount is \$261.00.

The claimant was initially hired six years ago as a full-time employee. However, the claimant currently works his own schedule and has for years. The employer has more work available to him; however, the claimant chooses to limit his hours each week.

The claimant reactivated his claim for benefits effective October 14, 2018, but has not filed any weekly continued claims for benefits. During the week ending October 20, the claimant worked 14.34 hours at a rate of \$15.50 an hour for total gross wages in the amount of \$237.88. He was scheduled to work on Monday and Tuesday of that week but did not arrive for work and did not tell the employer why he would be absent. For the week ending October 27, the claimant worked 20.2 hours and earned \$313.10 in gross wages. The next week, the week ending November 3, the claimant worked 31.2 hours and earned \$483.60 in gross wages. For the week ending November 10, the claimant worked 23.37 hours and earned \$362.24 in gross wages.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not partially or totally unemployed. The issues of availability for work and the chargeability of the employer's account are moot at this time. Benefits are denied.

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:

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.* In this case, the claimant has performed services and earned wages for each week since reactivating his claim for benefits. He is not totally unemployed.

The next question is whether he is partially unemployed. In order to be partially unemployed, an individual must be laid off from full-time employment or working less than his or her regular full-time work week. *Id.* If an individual is employed in a part-time position working the same hours and wages as contemplated at hire, he or she cannot be considered partially unemployed. Iowa Admin. Code r. 871-24.23(26). The claimant's wage history and the employer's testimony establish that the claimant has become a part-time employee working varied hours for a multitude of reasons. He continues to work for the employer in the same contract of hire on which the parties have agreed. As the claimant is working in a part-time job in the same hours and wages contemplated at hire, or agreed to shortly thereafter, the claimant is not partially unemployed and is not eligible for benefits.

As the claimant is not partially unemployed nor has he had any weeks of total unemployment, the issues of his availability for work and the chargeability of the employer's account are moot at this time.

DECISION:

The October 26, 2018, reference 03, unemployment insurance decision is reversed. The claimant is not partially unemployed and benefits are denied. The issues of availability for work and the chargeability of the employer's account are moot at this time.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn