

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**KELSEY R JONES**  
Claimant

**QHC FORT DODGE VILLA LLC**  
Employer

**APPEAL 17A-UI-04984-LJ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/16/17**  
**Claimant: Appellant (4-R)**

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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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the May 9, 2017 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was still employed for the same hours and wages as in her original contract of hire. The parties were properly notified of the hearing. A telephone hearing was held on May 31, 2017. The claimant, Kelsey R. Jones, participated. The employer, QHC Fort Dodge Villa, L.L.C., participated through Stacy Benna, Administrator; and Lanett Bair, Director of Nursing.

**ISSUES:**

Does the claimant meet the definition of being considered partially unemployed?  
Does the claimant meet the definition of being considered totally unemployed?  
Is the claimant able to work and available for work?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part time (36 hours per week), most recently as a CNA, from April 2, 2015, until April 19, 2017, when she was suspended without pay. The employer testified that claimant is still employed, though she remains on suspension pending the outcome of an outside agency investigation. Claimant has not performed any work for the employer since her shift that ended on April 19. The separation due to claimant's disciplinary suspension has not yet been the subject of a fact-finding interview.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was partially unemployed for the one-week period ending April 22, 2017. She was totally unemployed for the weeks ending April 29, May 6, May 13, and May 20, 2017. Claimant was able to work and available for work those weeks and benefits are allowed, provided she is otherwise eligible.

**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.

**Was Claimant Totally 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 was totally unemployed for the weeks ending April 29, May 6, May 13, and May 20. She performed no work during these weeks and she received and reported no wages. Therefore, claimant may be eligible for benefits during these weeks.

***Was Claimant Partially Unemployed?***

The next question is whether she 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 was hired into a part-time position. She has worked part-time hours during her entire employment. Her hours have fluctuated as was the expectation when she was hired. She continues to work for the employer. However, here claimant's hours were unexpectedly limited during the week ending April 22, 2017, when the employer suspended her. Claimant is eligible for partial unemployment benefits for that one-week period, provided she is not disqualified based on the suspension.

***Was Claimant Able to Work and Available 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".

Iowa Admin. Code r. 871-24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of

services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

An individual claiming benefits must be able to work, available for work, and actively and earnestly seeking work. Here, claimant appears to have been able to work and available for work. Accordingly, benefits are allowed, provided she is otherwise eligible. Claimant became partially and then totally unemployed as a result of her employer placing her on a disciplinary suspension. This is considered a separation, and this separation has not yet been the subject of a fact-finding interview. Therefore, this issue will be remanded.

**DECISION:**

The May 9, 2017 (reference 01) unemployment insurance decision is modified in favor of the appellant/claimant. Claimant was partially unemployed during the one-week period ending April 22, 2017, and she was able for work and available to work that week. Claimant was totally unemployed for the weeks ending April 29, May 6, May 13, and May 20, 2017. She was able to work and available for work during those weeks. Benefits are allowed, provided claimant is otherwise eligible.

**REMAND:**

Claimant's separation due to her disciplinary suspension on April 19, 2017, is remanded to the Benefits Bureau of Iowa Workforce Development for initial investigation and determination.

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Elizabeth A. Johnson  
Administrative Law Judge

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Decision Dated and Mailed

lj/scn