

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DEAN A BLUM
Claimant

HRB RESOURCES LLC
Employer

APPEAL NO. 20A-UI-14744-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/19/20
Claimant: Appellant (1)

Iowa Admin. Code r. 871-24.23(26) – Part-Time Worker – Same Wages and Hours
Iowa Code § 96.4-3 – Able and Available
Iowa Code § 96.7(2)A(2) – Partial Benefits
Iowa Code § 96.1(A)(37) – Total and Partial Unemployment

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated November 6, 2020, reference 01, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on January 15, 2020. Claimant participated personally. Employer failed to respond to the hearing notice and did not participate.

ISSUES:

Whether claimant is still employed at the same hours and wages?
Whether claimant is eligible to receive partial benefits?
Whether claimant is able and available for work?

FINDINGS OF FACT:

The claimant currently works for HRB Resources, a base period employer, on a split full time/part time schedule. Claimant is a master tax advisor. Claimant explained that during tax season (January–April) he works full time hours. Outside of tax season claimant works part time, as needed hours with no hours guaranteed. These are the same terms and conditions as contemplated in the original contract of hire and that claimant has been working under for nearly forty years.

Claimant stated that this year things worked a little different from in normal years. Claimant normally would no longer be working full time hours after April, but this year worked full time into July as filing deadlines were extended.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not partially unemployed.

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.

Because the claimant has an ongoing agreement with employer whereby he works full time hours for the tax season, and part time on call hours during the other eight months of the year, claimant is working the same hours and for the same wages as in his agreement. Since currently employed part time, claimant is not considered partially unemployed. Benefits are denied.

DECISION:

The November 6, 2020, reference 01, decision is affirmed. The claimant is not partially unemployed and benefits are denied.



Blair A. Bennett
Administrative Law Judge

February 2, 2021
Decision Dated and Mailed

bab/mh