

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**DANIEL L MCWHINNEY**  
Claimant

**APPEAL NO. 19A-UI-09610-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**NCS PEARSON INC**  
Employer

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

Iowa Code § 96.4-3 – Able and Available  
Iowa Code § 96.7(2)A(2) – Partial Benefits  
Iowa Code § 96.19(38) – Total and Partial Unemployment

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated November 26, 2019, reference 01, which held claimant not able and available for work as claimant had not done the required two work searches per week. After due notice, a hearing was scheduled for and held on January 3, 2020. Claimant participated personally. Claimant's Exhibit A was admitted into evidence.

**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 NCS Pearson, a base period employer, under the same terms and conditions as contemplated in the original contract of hire. For years, claimant's agreement with employer has been to work for periods of time and then claimant would be off from work for a period of time. In the present year, employer is expecting to call claimant back to work sometime in late February or early March, 2020.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant is not temporarily unemployed and the claimant must conduct weekly job searches.

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.

Temporary unemployment is not to exceed four consecutive weeks without the necessity of the laid off person conducting a work search. When this decision was entered, claimant had not filed for four consecutive weeks of unemployment. Since that time, claimant has filed for four consecutive weeks of unemployment benefits, and as such, claimant is required to do his job search each week.

**DECISION:**

The November 26, 2019, reference 01, decision is affirmed. The claimant is required to do his job search as he has exceeded four weeks of being unemployed so he is no longer defined as being temporarily unemployed.

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Blair A. Bennett  
Administrative Law Judge

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Decision Dated and Mailed

bab/scn