

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

BRIDGET F SAUNDERS

Claimant

YOUNG MENS CHRISTIAN ASSN

Employer

APPEAL 16A-UI-07324-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/29/16

Claimant: Appellant (1)

Iowa Code §96.4(3) - Able and Available
Iowa Code §96.19(38)a & b – Total and Partial Unemployment
Iowa Code §96.7(2)a – Same Base Period Employment

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 29, 2016, (reference 02) unemployment insurance decision that concluded the claimant was ineligible to receive partial unemployment insurance benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 20, 2016. The claimant participated personally. The employer participated through Tami Ruppel, payroll administrator. Kim Ubben, wellness coordinator, also testified. Claimant exhibit A and Employer exhibit 1 were admitted into evidence. The administrative law judge took official notice of the administrative record, including fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the claimant eligible for partial unemployment insurance benefits?
Was the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant has performed work for this employer on a part-time basis since hire in 2014, with no guaranteed hours or shifts. The claimant historically worked two shifts a week until she accepted a temporary, full-time position with the Des Moines school district in April 2016, and requested to be on a substitute basis only. The claimant last worked on June 2, 2016 for the school district. The claimant has resumed working one day per week for this employer, for two hours. The claimant's availability for additional shifts is limited due to her husband's work schedule (he works Monday through Saturday, from 6:00 a.m. to 5:00 to 7:00 p.m.), who

provides childcare when she works, her son's basketball schedule (Monday, Tuesday and Thursday evenings from 6:15 p.m. until 8:00 p.m.), and on Tuesdays and Thursdays from 4:00 to 6:30 p.m., she helps her disabled sister. More shifts could be made available to the claimant if she were able to work.

The claimant intends to begin a full-time position with Mitchell pre-school in September 2016.

REASONING AND CONCLUSIONS OF LAW:

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

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.

Iowa Admin. Code r. 871-24.23(16) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

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.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa Ct. App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *State v. Holtz*, Id. In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, Id.

Based on the evidence presented, the administrative law judge concludes the limitation in hours worked with this employer is triggered by the claimant's inability to work or unavailability for the available hours. Because she does not have full-time base-period wages and the level of employment is consistent with the base-period wage history with this employer, she may not be considered partially unemployed and the availability for work is moot.

DECISION:

The June 29, 2016, (reference 02) unemployment insurance decision is affirmed. The claimant is not partially unemployed and benefits are denied.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/pjs