

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SCOTT A JOHNSON
Claimant

APPEAL 19A-UI-04079-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SHELL ROCK HEALTHCARE CENTER
Employer

**OC: 04/21/19
Claimant: Respondent (1)**

Iowa Code § 96.19(38) – Total, Partial, and Temporary Unemployment
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The employer filed an appeal from the May 16, 2019, (reference 02) unemployment insurance decision that allowed benefits based upon a determination that claimant was still employed and working when work was available to him. The parties were properly notified of the hearing. A telephonic hearing was held on June 12, 2019. The claimant, Scott A. Johnson, did not register a telephone number at which to be reached and did not participate in the hearing. The employer, Shell Rock Healthcare Center, participated through Christina Hubka, Executive Director. Employer's Exhibits 1 and 2 were received and admitted into the record. The administrative law judge took official notice of the administrative record.

ISSUES:

Is the claimant totally unemployed?
Is the claimant partially 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 began working for this employer on July 19, 2016, as a full-time CMA/CNN. Claimant's standard schedule was to work from 2:00 p.m. until 10:00 p.m.

During the first week of May 2019, the employer's census dropped and it needed to cut employee hours. The employer offered claimant the opportunity to pick up hours driving the van.

During the week ending May 11, 2019, claimant was scheduled to work five days from 4:00 p.m. until 8:00 p.m. Claimant worked all twenty hours offered to him that week. During the week ending May 18, 2019, claimant was scheduled to work five days from 4:00 p.m. until 8:00 p.m. Claimant worked all twenty hours offered to him that week as well. Claimant picked up some

hours driving the van around this time. The employer also maintains that claimant had an LPN work for him on May 15, 2019.

During the week ending May 25, 2019, claimant was scheduled to work four days from 4:00 p.m. until 8:00 p.m. Claimant worked three of the days he was scheduled, and he called in sick for one of his scheduled shifts. Claimant has not filed for unemployment insurance benefits since the week ending May 25, 2019.

On May 31, 2019, claimant requested to switch to PRN status. The employer granted claimant's request. Claimant is still employed by this employer as a PRN employee.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was partially unemployed for the three weeks ending May 25, 2019. Benefits are allowed for those three weeks, provided he is otherwise eligible.

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.

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 he has claimed benefits. Therefore, claimant is not totally unemployed.

The next question is whether claimant 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).

In this case, claimant was hired into a full-time position. The employer changed claimant's position to a part-time position beginning in May 2019, due to a low census in the facility. Claimant's hours were reduced through no request or fault of his own. The administrative law judge concludes claimant was partially unemployed for the weeks ending May 11, May 18, and May 25, 2019. Benefits are allowed for those three weeks, provided he is otherwise eligible.

Claimant requested to move to PRN status following the week ending May 25, 2019. Therefore, any reduction in hours from that point forward would be by his own request. The administrative law judge mentions this to acknowledge the information, though the record shows that claimant stopped filing for benefits after the week ending May 25, 2019.

DECISION:

The May 16, 2019, (reference 02) unemployment insurance decision is affirmed. Claimant was partially unemployed for the weeks ending May 11, May 18, and May 25, 2019. Benefits are allowed for those three weeks, provided he is otherwise eligible.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn