

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANNDREIKA S BROTHERN
Claimant

ABCM CORPORATION
Employer

APPEAL 18A-UI-07833-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 06/24/18
Claimant: Appellant (1)**

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)b –Partial Unemployment

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 18, 2018, (reference 01) unemployment insurance decision that denied benefits based upon her unduly limiting her availability for work. The parties were properly notified about the hearing. A telephone hearing was held on August 13, 2018. Claimant participated and testified. Employer participated through Human Resource Coordinator Brian Clark.

ISSUES:

Does the claimant meet the definition of being considered partially unemployed?

Is 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: Claimant began working for employer on January 28, 2016 as a full-time CNA. On March 5, 2018, claimant requested to move from full-time employment to PRN status. Employees on PRN status are called to work on an as-needed basis and are not guaranteed any hours. Claimant was aware of this at the time she made her request. Claimant made this request because she was planning on moving to a different locality, but wanted to be able to pick up work whenever she was back in town visiting. Claimant ended up not moving and asked about returning to full-time status, but was told she would have to submit her request in writing. Claimant was also advised that if she continued to move back and forth between full-time and PRN status, the employer may decide to end her employment at some time in the future. Claimant ultimately decided to remain on PRN status, even though full-time work is available, as she did not want to risk losing her job by later asking to go back to PRN status.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is partially unemployed but is not able to and available for work.

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 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 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.

Claimant was initially hired as a full-time employee. On March 16, 2018 claimant was moved to PRN status at her own request. At the time of the move, claimant understood she was not guaranteed any hours and would only be called on an as-needed basis. Because the claimant is not currently employed under the same hours and wages as contemplated at hire, she is considered partially unemployed. However, this change in status is due to claimant's decision to limit her availability by only working PRN, rather than as a full-time employee. As such, claimant is not able to and available for work and benefits are withheld.

DECISION:

The July 18, 2018, (reference 01) unemployment insurance decision is affirmed. The claimant is partially unemployed, but is not able to and available for work. Benefits are withheld until such time as claimant is otherwise eligible.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs