

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHERYL L MOUREAU**  
Claimant

**APPEAL NO. 12A-UI-05444-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EXPRESS SERVICES INC**  
Employer

**OC: 04/01/12  
Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Ability to and Availability for Work

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the May 9, 2012 (reference 02) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on June 1, 2012. Claimant participated. Employer participated through Director of Operations Erin Johnston.

**ISSUE:**

Is claimant able to and available for work effective April 1, 2012?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant is employed part-time in temporary assignments through the employer, a temporary employment agency. She was not promised or guaranteed full-time hours at the time of hire or assignment. Her base period consists of solely part-time employment.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes is not partially unemployed effective April 1, 2012.

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, 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.

An individual shall be deemed partially unemployed in any week in which 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.

Because claimant was hired to work only part-time hours and was not guaranteed full-time hours, and the wage history consists of only part-time wages, she is not considered to be unemployed within the meaning of the law. When an individual is hired to work part-time or in a temporary assignment, the implied agreement is that full-time work will not be regularly available. Thus, since the employer continues to provide regular part-time hours and is currently employed under the same hours and wages as contemplated at hire or assignment placement, she is not considered partially unemployed.

**DECISION:**

The May 9, 2012 (reference 02) decision is affirmed. She is not partially unemployed and benefits are denied.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/kjw