

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JAMIE L RIGGS**

Claimant

**EXPRESS SERVICES INC**

Employer

**APPEAL 20A-UI-01399-AD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/10/19**

**Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search

Iowa Code § 96.19(38) – Total, partial unemployment

Iowa Admin. Code r. 871-24.23(26) – Eligibility – A&A – Part-time same hours, wages

Iowa Code § 96.7(2)a(2) – Charges – Same base period employment

**STATEMENT OF THE CASE:**

On February 16, 2020, Jamie Riggs (claimant/appellant) filed a timely appeal from the February 12, 2020 (reference 06) unemployment insurance decision that determined claimant was not eligible to receive unemployment insurance benefits.

A telephone hearing was held on March 3, 2020 at 1 p.m. The parties were properly notified of the hearing. Claimant participated personally. Express Services Inc. (employer/respondent) did not register a number for the hearing and did not participate.

Official notice was taken of claimant's payment and wage history on the department's information database.

**ISSUE(S):**

- I. Is the claimant totally, partially, or temporarily unemployed?
- II. Is the claimant able to and available for work?
- III. Is the claimant still employed at the same hours and wages? Is the employer's account subject to charge? Is the claimant an on-call worker?

**FINDINGS OF FACT:**

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

Claimant began working for employer in September 2019. Claimant is still employed by employer. Employer is a staffing agency. Claimant has been assigned to GSI during this time. Claimant was initially assigned to do shipping and receiving work. This consisted of going into the parts room, picking parts, boxing them up, shipping them out, and so on.

Claimant initially worked full-time hours, but there was no guarantee of hours at hire. It was understood that fall was employer's busy season and that her hours may be reduced or her assignment may end in the winter due to a lack of work.

Claimant was placed on restrictions due to pregnancy complications around the beginning of December 2019. She was restricted from lifting greater than 20 to 30 pounds and from sitting or standing too long. Employer agreed to keep claimant on to do clerical work part-time within those restrictions. Since the beginning of December 2019, claimant has worked approximately 20 hours per week for employer. Claimant is no longer on pregnancy-related restrictions from her doctor but is avoiding work which requires lifting. Claimant expects to return to full-time work with employer after her pregnancy.

Claimant has been searching for both part-time work to supplement her work for employer and for full-time work. Claimant is not aware of any assignments from employer that would fit within her self-imposed restrictions.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the February 12, 2020 (reference 06) unemployment insurance decision is AFFIRMED. Claimant is not eligible for benefits.

I. Is the claimant totally, partially, or temporarily unemployed?

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 Admin. Code r. 871-24.23(26) provides:

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

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

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".

Claimant is not totally or temporarily unemployed, as she continues to be employed by employer and earning wages for services performed. Claimant is not partially unemployed, either. While claimant did initially work full-time hours at her assignment, there was no guarantee of full-time hours. Instead, claimant understood that her hours may be reduced or her assignment may end in the winter due to a lack of work. In other words, claimant's hours have always been uncertain and subject to fluctuation and as such her employment is considered part-time. As such, claimant is still employed on the same basis as contemplated at the time of hire. Because claimant is still attached to employer and still employed as contemplated in the original contract of hire she is not "available for work" within the meaning of the law and is not eligible for benefits.

There is no question that claimant wishes to be employed full-time and is searching for full-time work she is able to do. Here desire for more stable, full-time employment is admirable. However, so long as claimant continues to be employed by employer in the same way as originally contemplated, she is not considered available for work under applicable law and as such is not eligible for benefits.

Because claimant is not totally, partially, or temporarily unemployed, the other listed issues need not be addressed.

**DECISION:**

The February 12, 2020 (reference 06) unemployment insurance decision is AFFIRMED. Claimant is not eligible for benefits.

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Andrew B. Duffelmeyer  
Administrative Law Judge

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Decision Dated and Mailed

abd/scn