

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**BETTY J SUNDT**  
Claimant

**WELLS ENTERPRISES INC**  
Employer

**APPEAL 18A-UI-11828-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/28/18  
Claimant: Appellant (4)**

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment  
Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.23(26) – Availability Disqualifications Same Hours and Wages  
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

**STATEMENT OF THE CASE:**

Betty J. Sundt (claimant) filed an appeal from the December 3, 2018, reference 01, unemployment insurance decision that denied benefits effective November 11, 2018, based upon the determination she is still employed at the same hours and wages and cannot be considered partially unemployed. After due notice was issued, a telephone conference hearing was held on December 26, 2018. The claimant participated. Wells Enterprises, Inc. (employer) responded to the hearing notice and declined to participate in the hearing. No exhibits were offered into the record.

**ISSUES:**

Is the claimant partially or totally unemployed effective November 11, 2018?  
Was the claimant able to work, available for work, and actively and earnestly seeking work effective November 11, 2018?  
Is the employer's account subject to charge?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed her original claim for benefits effective October 28, 2018. She did not file a weekly continued claim for the week ending November 3, 2018 and her claim became inactive. The claimant was laid off from her full-time position with the employer during the week ending November 10, 2018 and did not reactivate her claim for benefits during that week.

The claimant reactivated her claim for benefits effective November 11, 2018 and her weekly benefit amount (WBA) is \$485.00. The claimant returned to work that same week and has been reporting wages earned each week through the week ending December 22, 2018. The wages reported have been more than \$500.00 per week, or the WBA plus fifteen dollars. The claimant will likely be laid off for a week in the near future.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not eligible for benefits effective November 11, 2018 through the week ending December 22, 2018, as she was not totally or partially unemployed. The issues of availability for work and the chargeability of the employer's account are moot at this time. Benefits are denied.

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 Code section 96.19(38) provides:

Definitions.

38. 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. 871-24.22 provides, in relevant part:

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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

...

(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 provides, in relevant part:

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

...

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

...

(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.

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 performed services and earned wages for each week she has claimed benefits. She was not totally unemployed from November 11 through December 22, 2018.

The next question is whether she is partially unemployed. In this case, in order to be partially unemployed, the claimant would need to be working her regular job earning wages in an amount less than her WBA plus fifteen dollars. Iowa Code § 96.19(38)b(1). The claimant's WBA is \$485.00 and each week she reported more than \$500.00 earned in wages. Therefore, the claimant was not partially unemployed from November 11 through December 22, 2018.

As the claimant was not totally or partially unemployed during the relevant time frame, she is not eligible for benefits. The issues of her availability for work and the chargeability of the employer's account are moot at this time. If the claimant becomes totally or partially unemployed in the future and she has an active claim for benefits, those issues will be addressed at that time.

**DECISION:**

The December 3, 2018, reference 01, unemployment insurance decision is modified in favor of the appellant, in this case the claimant. The claimant was not totally or partially unemployed effective November 11, 2018 through the week ending December 22, 2018 and benefits are denied. The issues of availability for work and the chargeability of the employer's account are moot at this time.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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