

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ERIN N MORSE
Claimant

BANBERRY DESIGNS INC
Employer

APPEAL 19A-UI-00522-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/16/18
Claimant: Respondent (4R)**

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

STATEMENT OF THE CASE:

The employer filed an appeal from the January 9, 2019, (reference 01) unemployment insurance decision that allowed benefits based upon reduced hours. The parties were properly notified about the hearing. A telephone hearing was held on February 5, 2019. Claimant was not registered on the Clear2There hearing control screen at the time of the hearing and therefore was not called to participate. Employer participated through owner Tom Broderick.

On February 5, 2019, after the record was closed but before a decision was issued, claimant called the Appeals Bureau and was able to provide a confirmation number proving she registered for the hearing. It was discovered that due to an administrative error, claimant's number was not registered in the Clear2There hearing control screen. On February 5, 2019, claimant submitted a written request to reopen the record. On February 6, 2019, the administrative law judge issued an order to reopen the record.

A new hearing was scheduled for February 19, 2019, at 9:00 a.m. Claimant participated. Employer participated through owner Tom Broderick.

ISSUES:

Is the claimant eligible for partial unemployment insurance benefits?
Is the claimant able to work and available for work effective December 16, 2018?
Is claimant still employed at the same hours and same wages?
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: Claimant began working for employer in 2015. Claimant last worked as a part-time warehouse employee. Claimant has always worked on average about 24 hours per week. Claimant was never guaranteed a specific amount of hours per week.

Claimant worked her normal hours during the one week ending December 22, 2018.

Claimant did not work during the one week ending December 29, 2018, because no work was available. Claimant was grateful she would not be required to pay for childcare for her children who had a break from school that week.

Claimant was paid \$99.24 in holiday pay, but did not report the holiday pay. Therefore, it was not deducted from her benefits.

Claimant worked her normal hours during the one week ending January 5, 2019.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was totally and temporarily unemployed during the one week ending December 29, 2018.

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".

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, claimant was totally unemployed during the one week ending December 29, 2018. Because it was a temporary layoff, claimant was not required to be available for work. Claimant is eligible for benefits for the one week ending December 29, 2018.

DECISION:

The January 9, 2019 (reference 01) unemployment insurance decision is modified in favor of employer. The claimant was totally unemployed during the one week ending December 29, 2018, and is eligible for benefits for that week only.

REMAND:

This matter is remanded for an adjustment of claimant's benefit payment for the one week ending December 29, 2018, based on the unreported receipt of holiday pay in the amount of \$99.24.

Christine A. Louis
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

Decision Dated and Mailed

cal/scn