

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRADLEY T HAMILTON
Claimant

APPEAL 18A-UI-08084-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ATA RETAIL SERVICES INC
Employer

OC: 06/03/18
Claimant: Appellant (1)

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:

The claimant filed an appeal from the July 18, 2018, (reference 01), unemployment insurance decision that denied benefits based upon a determination that claimant was not partially unemployed. The parties were properly notified of the hearing. A telephonic hearing was held on August 20, 2018. The claimant, Bradley T. Hamilton, participated. The employer, ATA Retail Services, Inc., did not register a telephone number at which to be reached and did not participate in the hearing. Claimant's Exhibits A and B were received and admitted into the record. The administrative law judge took official notice of the administrative record.

ISSUE:

Is the claimant partially unemployed effective June 3, 2018?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant has been employed with ATA Retail Services, Inc. for five and one-half years. Throughout claimant's employment, he has been a part-time employee. Claimant used to average a minimum of 25 to 30 hours per week. In the spring of 2017, claimant was moved to a reset merchandiser position. He now averages approximately 11 hours per week. Claimant's base period shows that he worked reduced hours during the second, third, and fourth quarters of 2017.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is not partially unemployed. The issues of availability for work and chargeability of the employer's account are moot at this time. Benefits are withheld.

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 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.

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 has performed services and earned wages for each week he has claimed benefits. The administrative record shows that claimant has reported wages for each week he has claimed benefits. He is not totally unemployed.

The next question is whether claimant is partially unemployed. In order to be partially unemployed, an individual must be laid off from full-time employment or working less than his or her regular full-time work week. *Id.* If an individual is employed in a part-time position working the same hours and wages as contemplated at hire, he or she cannot be considered partially unemployed. Iowa Admin. Code r. 871-24.23(26). The claimant was hired into a part-time position. He has worked part-time hours during his entire employment. He continues to work for the employer. For the past year and one-quarter, claimant has been working reduced hours. While claimant may have been promised a minimum number of hours upon hire, over the past year and one-quarter he has acquiesced to working a reduced number of hours. As the claimant is working in a part-time job in the same hours and wages reflected in his base period, the claimant is not partially unemployed and is not eligible for benefits.

As the claimant is not partially unemployed nor has he had any weeks of total unemployment, the issues of his availability for work and the chargeability of the employer's account are moot at this time.

DECISION:

The July 18, 2018, (reference 01), unemployment insurance decision is affirmed. The claimant is not partially unemployed and benefits are withheld. The issues of availability for work and the chargeability of the employer's account are moot at this time.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn