

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**HOLLY L CLENDENEN**  
Claimant

**APPEAL NO: 19R-UI-00125-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ABCM CORPORATION**  
Employer

**OC: 09/02/18**  
**Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Availability Disqualifications  
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the November 30, 2018, (reference 02) unemployment insurance decision that denied benefits. A first hearing was scheduled but not conducted on December 18, 2018. The claimant/appellant failed to appear at the hearing, and the appeal was dismissed. Upon a remand decision from the Employment Appeal Board, the appellant's request to reopen the hearing was granted. Notice of the second hearing was mailed to the parties' last known addresses of record for a telephone hearing to be held at January 22, 2019. The claimant participated personally. The employer participated through Mary Tirevold, administrator.

The administrative law judge took official notice of the administrative records including the fact-finding documents and wage history. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

*Note to claimant:* Additional information about food, housing, and other resources, can be found by dialing 211 or at [www.211iowa.org](http://www.211iowa.org).

**ISSUES:**

Is the claimant eligible for partial unemployment insurance benefits?  
Is the claimant able to and available for work?  
Is the claimant still employed at the same hours and wages?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant established a claim for unemployment insurance benefits effective September 2, 2018. The claimant's base period is from second quarter of 2017 through first quarter of 2018. She has only part-time wages in her base period and no other employment.

The claimant began employment with this employer as a full-time cook in 2010. In 2016, the employer told claimant she could continue as a cook but permanently reduced the claimant's hours to a part-time basis. She has worked on average 15-20 hours per week, since 2016, unless she is able to pick up an extra shift. The employer did not guarantee that claimant would be scheduled to work full-time hours each week after 2016.

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

For the reasons that follow, the administrative law judge concludes the claimant is not partially unemployed effective October 28, 2018.

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:

"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.

It is true that in 2010, the claimant was hired full-time as a cook. However, since 2016, the claimant has worked only part-time for this employer. Her base period consists only of part-time wages as well. Because the claimant has only worked part-time her entire base period, and was not guaranteed full-time hours, the claimant is not considered to be unemployed within the meaning of the law.

When an individual agrees to work part-time, the implied agreement is that full-time work will not be regularly available. The claimant has agreed to work part-time based upon her continued employment at the same hours for two years. Thus, since the employer continues to provide regular part-time hours and claimant is currently employed under the same hours and wages since 2016 and through her entire base period history, she is not considered partially unemployed. Benefits are denied.

**DECISION:**

The November 30, 2018, (reference 02) decision is affirmed. The claimant is not partially unemployed and benefits are denied. If the circumstances change and claimant believes the disqualification can be removed, she should contact Iowa Workforce Development.

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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

jlb/scn