

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LAURIE MIKITA**  
Claimant

**APPEAL NO: 17A-UI-01315-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**STEENA CO LLC**  
Employer

**OC: 01/08/17**  
**Claimant: Respondent (2)**

871 IAC 23.43 (4) a – Partial Unemployment  
Section 96.4-3 – Able and Available for Work

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the January 27, 2017, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 27, 2017. The claimant participated in the hearing. Jean Bambrook, Director of Operations, participated in the hearing on behalf of the employer. Employer's Exhibit 1 was admitted into evidence.

**ISSUE:**

The issue is whether the claimant is eligible for partial unemployment benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was hired as a part-time crew member for Steena Company (McDonalds) on August 25, 2016, and continues to be employed in that capacity with no change in her hours or wages. She was never guaranteed a certain number of hours at the time of hire.

For the two week pay period ending September 2, 2016, the claimant worked 8.80 hours; for the pay period ending September 16, 2016, she worked 35.13 hours; for the pay period ending September 30, 2016, she worked 35.42 hours; for the pay period ending October 14, 2016, she worked 39.80 hours; for the pay period ending October 28, 2016, she worked 49.62 hours; for the pay period ending November 10, 2016, she worked 34.25 hours; for the pay period ending November 23, 2016, she worked 22.13 hours; for the pay period ending December 9, 2016; she worked 18.95 hours; for the pay period ending December 23, 2016, she worked 31.47 hours; for the pay period ending January 6, 2017, she worked 21.77 hours; for the pay period ending January 20, 2017, she worked 19.38 hours; and for the pay period ending February 3, 2017, she worked 18.07 hours. January and February are traditionally the employer's slower months as the employer explains to new employees at the time of hire.

The claimant was absent due to the properly reported illness of herself or her mother November 7, November 13, November 15, November 16, November 20, December 16, December 18; December 26, December 27, December 28, 2016; and February 4, 2017, and was absent due to poor road conditions due to winter weather January 16, 2017. Those absences reduced the number of hours the claimant worked.

**REASONING AND CONCLUSIONS OF LAW:**

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

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 Admin. Code r. 871-23.43(4)a provides in part:

(4) Supplemental employment.

a. An individual, who has been separated with cause attributable to the regular employer and who remains in the employ of the individual's part-time, base period employer, continues to be eligible for benefits as long as the individual is receiving the same employment from the part-time employer that the individual received during the base period. The part-time employer's account, including the reimbursable employer's account, may be relieved of benefit charges....

The claimant was hired as a part-time crew member. The employer never guaranteed the claimant a set number of hours per week. There has been no separation from the claimant's part-time employment and she is currently working for this employer at the same hours and wages as contemplated in the original contract of hire. Consequently, the claimant is disqualified from receiving benefits based on her part-time employment with this employer.

**DECISION:**

The January 27, 2017, reference 01, decision is reversed. The claimant is not partially unemployed within the meaning of the law. Benefits must be denied.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/rvs