

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARIA D HERNANDEZ
Claimant

STAFF MANAGEMENT SOLUTIONS LLC
Employer

APPEAL 20A-UI-01061-S1-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/05/20
Claimant: Appellant (2)

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.4(3) – Able and Available
871 IAC 24.22(2)f – Part-Time Worker – Able and Available

STATEMENT OF THE CASE:

Maria Hernandez (claimant) appealed a representative's February 3, 2020, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits because she was still employed with Staff Management Solutions (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for February 20, 2020. The claimant participated personally through Sofia Vinnnet, Interpreter. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing. The administrative law judge took official notice of the administrative file.

ISSUE:

The issue is whether the claimant is able and available for work and whether the claimant is partially unemployed.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer is a staffing agency. The claimant was hired on December 19, 2017, and assigned to work at Proctor and Gamble as a full-time packer. The claimant usually worked 37.5 hours per week at \$13.00 per hour earning \$487.50 per week. She filed a claim for unemployment insurance benefits with an effective date of January 5, 2020, when the employer reduced her hours. Her weekly benefit amount was \$256.00.

For the weeks ending January 11 and 25, 2020, the employer had no work available for her and the claimant reported no earnings. The employer reduced the claimant's hours for other weeks. For the week ending January 18, 2020, the claimant reported earnings of \$260.00. For the week ending February 1, 2020, the claimant reported earnings of \$247.00. For the week ending February 8, 2020, the claimant reported earnings of \$195.00. For the week ending February 15, 2020, the claimant reported earnings of \$273.00. She worked all hours the employer offered.

The employer's representative completed a Notice of Claim indicating the employer had reduced the claimant's hours and the claimant was working all available hours. It specified that the claimant currently employed as a part-time employee. It did not indicate whether she was hired as a full-time or part-time employee. The employer participated in the fact-finding interview and designated the claimant as a full-time employee. The claimant could not participate in the fact-finding interview because she was scheduled to work for the employer at the time of the interview and not released to attend the interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is partially unemployed and the employer is not relieved of benefit charges.

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".

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). The claimant was hired as a full-time worker. The representative reported to the agency that her hours were reduced by the employer. The claimant met her burden of proof to show she is partially unemployed and able and available for work as of January 5, 2020. The employer did not participate in the hearing and, therefore, provided no evidence to the contrary. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's February 3, 2020, decision (reference 01) is reversed. The claimant is able and available for work as of January 5, 2020. Benefits are allowed, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/scn