

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MATTHEW TENSLEY**  
Claimant

**APPEAL 17A-UI-00303-JP-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GRANITE CITY RESTAURANT OPERATION**  
Employer

**OC: 04/17/16**  
**Claimant: Appellant (1)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.23(26) – Same Hours and Wages  
Iowa Code § 96.19(38)b – Partial Unemployment

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the December 29, 2016, (reference 02) unemployment insurance decision that denied benefits as of November 6, 2016. The parties were properly notified about the hearing. A telephone hearing was held on January 31, 2017. Claimant participated. Employer participated through Hearing Representative Thomas Kuiper, Human Resources Generalist Sarah Hover, Director of Benefits Manager Kim Gabrelse, Executive Chef Jake Taft, and General Manager JD Harris. Employer Exhibit 1 was admitted into evidence with no objection. Official notice was taken of the administrative record of claimant's wage and benefit payment history, with no objection.

**ISSUES:**

Is the claimant able to work and available for work effective November 6, 2016?

Is the claimant still employed at the same hours and wages?

Is the claimant eligible to receive partial benefits?

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was hired to work part-time as a dish washer. Claimant was hired on July 1, 2014. When claimant was hired, he was hired as part-time variable employee. The employer does not guarantee any hours for part-time variable employees. Employer Exhibit 1. Part-time variable employees "are expected to work fewer than 30 hours per week over 12 months' time." Employer Exhibit 1. Claimant's hours are based on the projected restaurant volume and needs. Claimant could work anywhere from two days a week to five days a week. Claimant did not have a regularly set schedule. For the year 2016, claimant worked an average of 23.9 hours per week; this average does not include claimant's medical leave of absence from August 10, 2016 to November 2016.

After November 6, 2016, the employer did have part-time work available for claimant as contemplated in the original contract of hire. Claimant was paid for the following hours on the following pay dates: 23.27 on November 15, 2016; 18.53 on November 22, 2016; 17.43 on November 29, 2016; 18.4 hours on December 6, 2016; 21.77 hours on December 13, 2016; 11.46 on December 20, 2016; 25.89 on December 27, 2016; and 17.38 on January 3, 2017. On January 3, 2017, claimant had surgery and was not released to return to work until January 30, 2017. A pay date is for one week of work. Since November 6, 2016, claimant averaged 19.27 hours per week.

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

For the reasons that follow, the administrative law judge concludes claimant is not partially unemployed effective November 6, 2016.

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.

Because claimant was hired to work only part-time hours and was not guaranteed full-time hours, and the wage history consists of only part-time wages, claimant is not considered to be unemployed within the meaning of the law. When an individual is hired to work part-time, the implied agreement is that full-time work will not be regularly available. Thus, since the employer continues to provide regular part-time hours and claimant is currently employed under the same hours and wages as contemplated at hire, he is not considered partially unemployed.

**DECISION:**

The December 29, 2016, (reference 02) unemployment insurance decision is affirmed. Claimant is not partially unemployed and benefits are denied as of November 6, 2016.

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Jeremy Peterson  
Administrative Law Judge

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Decision Dated and Mailed

jp/rvs