

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

HOPE M SWARTZ

Claimant

APPEAL NO: 18A-UI-11919-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

RIVERVIEW DEVELOPMENT CORP

Employer

OC: 11/18/18

Claimant: Respondent (1)

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
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 I

STATEMENT OF THE CASE:

The employer/appellant, Riverview Development Corporation, filed an appeal from the December 4, 2018 (reference 02) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on December 28, 2018. The claimant did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing. The employer participated through James Harkness, administrator. The administrative law judge took official notice of the administrative records including the fact-finding documents. 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.

ISSUES:

Does the claimant meet the definition of being considered partially unemployed?
Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was hired to work full-time as a CNA. The claimant was employed first as a student in which she participated in on-the-job training for 3.5 weeks before having to take the licensing test. The claimant first took the test on November 13, 2018. She was not able to retest until November 27, 2018, at which time she passed. From November 13, 2018, through November 27, 2018, the employer did not have full-time work available for the claimant as contemplated in the original contract of hire because the claimant was no longer a CNA student and had to complete her licensing to continue employment. She has since resumed full-time employment with this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was partially unemployed November 13, 2018, through November 27, 2018, and is allowed benefits for this period, provided she is otherwise eligible.

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.

Because the claimant was not employed under the same hours and wages as contemplated at hire for the period of November 13 through 27, 2018, she is considered partially unemployed. Benefits may be allowed based upon reporting of weekly earnings and provided she has filed weekly continued claims for the weeks in question. For whatever period the employer is not offering the same wages and hours as contemplated in the contract or terms of hire, it may be liable for benefit charges to its account.

DECISION:

The December 4, 2018, (reference 02) decision is affirmed. The claimant was partially unemployed November 13 through 27, 2018 and benefits are allowed, provided she is otherwise eligible. She is required to report gross wages earned for each week of benefits claimed. The employer's account may be liable for charges.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn