

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DEIDRE L FLETCHER

Claimant

APPEAL 18A-UI-04832-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 03/18/18

Claimant: Appellant (2R)

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions
Iowa Code § 96.7(2)a – Same Base Period Employment

STATEMENT OF THE CASE:

Deidre L. Fletcher (claimant) filed an appeal from the April 19, 2018, reference 03, unemployment insurance decision that denied benefits based upon the determination she was not partially unemployed as she was employed at the same hours and wages as contemplated at hire. The parties were properly notified about the hearing. A telephone hearing was held on May 14, 2018. The claimant participated. The employer responded to the hearing notice via letter and declined to participate in the hearing. No exhibits were offered into the record.

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 employed part-time as a Kitchen Associate beginning in August 2017. In October 2017, she was promoted to a full-time employee and the administrative record shows she averaged over 40 hours of work a week. The claimant was separated from employment on March 28, 2018, when she was temporarily laid off due to a lack of work. The employer has indicated she will be recalled to work on or about June 25, 2018.

The claimant filed her claim for unemployment insurance benefits effective March 18, 2018 and her weekly benefit amount (WBA) is \$342.00. The claimant earns \$10.00 an hour and worked 30.6 hours the week ending March 24 and 30.54 hours the week ending March 31. The claimant did not report any wages earned for the week ending March 31, 2018. The claimant has not worked for the employer since the week ending March 31, 2018. She has been able to and available for work with the employer but has not been making two work searches during her temporary layoff.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was partially unemployed through the week ending March 31, 2018. She is on a temporary layoff due to a lack of work effective April 1, 2018, and is totally unemployed. She is able to and available for work but is warned that effective April 29, 2018, she is required to be conducting an active and earnest work search. Benefits are allowed, provided she is otherwise eligible.

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 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. 871-24.22 provides, in relevant part:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

...

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

...

c. Intermittent employment. An individual cannot restrict employability to only temporary or intermittent work until recalled by a regular employer.

...

(3) Earnestly and actively seeking work. Mere registration at a workforce development center does not establish that the individual is earnestly and actively seeking work. It is essential that the individual personally and diligently search for work. It is difficult to establish definite criteria for defining the words earnestly and actively. Much depends on the estimate of the employment opportunities in the area. The number of employer contacts which might be appropriate in an area of limited opportunity might be totally unacceptable in other areas. When employment opportunities are high an individual may be expected to make more than the usual number of contacts. Unreasonable limitations by an individual as to salary, hours or conditions of work can indicate that the individual is not earnestly seeking work. The department expects each individual claiming benefits to conduct themselves as would any normal, prudent individual who is out of work.

a. Basic requirements. An individual shall be ineligible for benefits for any period for which the department finds that the individual has failed to make an earnest and active search for work. The circumstances in each case are considered in determining whether an earnest and active search for work has been made. Subject to the foregoing, applicable actions of the following kind are considered

an earnest and active search for work if found by the department to constitute a reasonable means of securing work by the individual, under the facts and circumstances of the individual's particular situation:

- (1) Making application with employers as may reasonably be expected to have openings suitable to the individual.
- (2) Registering with a placement facility of a school, college, or university if one is available in the individual's occupation or profession.
- (3) Making application or taking examination for openings in the civil service of a governmental entity with reasonable prospects of suitable work for the individual.
- (4) Responding to appropriate "want ads" for work which appears suitable to the individual if the response is made in writing or in person or electronically.
- (5) Any other action which the department finds to constitute an effective means of securing work suitable to the individual.
- (6) No individual, however, is denied benefits solely on the ground that the individual has failed or refused to register with a private employment agency or at any other placement facility which charges the job-seeker a fee for its services. However, an individual may count as one of the work contacts required for the week an in-person contact with a private employment agency.
- (7) An individual is considered to have failed to make an effort to secure work if the department finds that the individual has followed a course of action designed to discourage prospective employers from hiring the individual in suitable work.

This rule is intended to implement Iowa Code section 96.4(3).

Iowa Admin. Code r. 871-24.23 provides, in relevant part:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

...

- (20) Where availability for work is unduly limited because the claimant is waiting to be recalled to work by a former employer or waiting to go to work for a specific employer and will not consider suitable work with other employers.

...

- (27) Failure to report on a claim that a claimant made any effort to find employment will make a claimant ineligible for benefits during the period. Mere registration at the workforce development center does not establish that a claimant is able and available for suitable work. It is essential that such claimant must actively and earnestly seek work.

(28) A claimant will be ineligible for benefits because of failure to make an adequate work search after having been previously warned and instructed to expand the search for work effort.

For the two-week period ending March 31, 2018, the claimant was working at her regular job, but earned less than her weekly benefit amount plus fifteen dollars. Therefore, she was partially unemployed and is entitled to benefits. The issue of the unreported wages in the amount of \$305.40 earned during the week ending March 31, 2018, is remanded to the Benefits Bureau for a recalculation of the amount of benefits to which the claimant is entitled for that week.

The claimant was placed on temporary layoff effective April 1, 2018. The claimant can be considered temporarily laid off for up to four weeks and does not have to be able to work, available for work, or actively and earnestly seeking work. However, after that four week period ends, the claimant is required to be able to work, available for work, and actively and earnestly seeking work. The claimant has established that she has been able to work and available for work. The claimant has not been given notice to expand her work search as her four weeks of temporary unemployment has expired. This is the claimant's warning that she must be actively and earnestly searching for work to remain available for unemployment insurance benefits. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The April 19, 2018, reference 03, unemployment insurance decision is reversed. The claimant was partially unemployed through the week ending March 31, 2018. She then became totally and temporarily unemployed effective April 1, 2018. As more than four weeks has passed, the claimant is no longer considered temporarily unemployed. She is able to and available for work, but this is her warning that she needs to conduct an active and earnest work search to remain eligible for benefits. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

REMAND:

The issue of the unreported wages in the amount of \$305.40 earned during the week ending March 31, 2018, is remanded to the Benefits Bureau for a recalculation of the benefits to which the claimant is entitled and if she has been overpaid benefits for that week as a result.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn