

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALPHA JALLOH
Claimant

APPEAL 18A-UI-04599-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MERCY HOSPITAL
Employer

**OC: 03/18/18
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 10, 2018, (reference 02) unemployment insurance decision that denied benefits based on his continued full-time employment at his same base period employer. The parties were properly notified of the hearing. A telephone hearing was held on May 9, 2018. The claimant participated and testified. The employer participated through Human Resource Business Partner Michael Wilkinson.

ISSUES:

Is the claimant able to work and available for work?
Does the claimant meet the definition of being considered partially unemployed?
If so, is the employer's account liable for potential charges?

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant currently works for Mercy Hospital, a base period employer. Claimant was initially hired as a part-time environmental service aid, but has been working full time since at least June 2015. Claimant continues working the same full-time hours and receiving the same pay as reflected in his base period. Claimant does not allege his wages or hours with this employer, his regular full-time employer, have reduced. Rather, claimant explained he was separated from his supplemental part-time employer.

REASONING AND CONCLUSIONS OF LAW:

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

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".

Iowa Admin. Code r. 871-24.22(2) provides:

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.

(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.

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 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....

Here, claimant was not separated from his regular full-time employer, but from his supplemental part-time employer. Claimant remains employed with his regular full time employer at the same hours and wages reflected in his base period. Because he has full-time base-period wages and the level of employment are consistent with the base-period wage history with this employer, claimant may not be considered partially unemployed. As claimant is not partially or totally unemployed, he is not eligible for benefits.

DECISION:

The April 10, 2018, (reference 02) unemployment insurance decision is affirmed. The claimant is not partially or totally unemployed and benefits are withheld.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs