

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

---

**MEGAN E GILCHRIST**  
Claimant

**NELLIS MANAGEMENT COMPANY**  
Employer

**APPEAL NO. 21A-UI-02861-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/05/20**  
**Claimant: Respondent (2R)**

---

Iowa Admin. Code r. 871-24.23(26) – Part-Time Worker – Same Wages and Hours

Iowa Code § 96.4-3 – Able and Available

Iowa Code § 96.7(2)A(2) – Partial Benefits

Iowa Code § 96.1(A)(37) – Total and Partial Unemployment

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated January 5, 2021, reference 02, which held claimant able and available for work. After due notice, a hearing was scheduled for and held on March 11, 2021. Claimant participated personally. Employer participated by Teresa Fox. Employer's exhibits 1-2 were admitted into evidence

**ISSUES:**

Whether claimant is still employed at the same hours and wages?

Whether claimant is eligible to receive partial benefits?

Whether claimant is able and available for work?

**FINDINGS OF FACT:**

This issue before the administrative law judge concerned hours the claimant worked for employer while still working, and whether these were the same hours and wages as previously worked.

The claimant worked 32-36 hours a week for employer and earned \$14.50 an hour. The claimant voluntarily quit her job on October 15, 2020.

While claimant was working for employer, she filed for unemployment benefits for the weeks ending April 18 – September 26, 2020. During that time period claimant often claimed to be working less than her normal hours and earning less than her weekly benefit amount.

Employer stated that employer had a policy that all employees would receive their regular average hours even during the pandemic. Employer stated that generally claimant would be offered her normal hours, but claimant often declined those normal hours for various family or health reasons. Employer only gave specifics regarding a couple of weeks. For the week

ending August 8 claimant was not working because she was sick. For the week ending April 29 claimant asked off work to take care of her son who had cut his finger. During the week of May 9 claimant asked off to care for her mother. Employer had no documentation for any of the other weeks claimant filed for less than normal hours.

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

For the reasons that follow, the administrative law judge concludes the claimant is not partially unemployed for the weeks between claimant's filing of an original claim on April 5 and October 15, 2020. After that date a job separation took place and that issue will be remanded to the fact finder.

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 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 has did not show that she was offered different hours than normal during the time she was filing for benefits, claimant is not eligible for benefits during the time from April 5 through October 15, 2020. Benefits are denied for that period. This matter does not address the separation issue. That issue will be remanded to the fact finder.

**DECISION:**

The January 5, 2021, reference 02, decision is reversed on the issue of claimant working the same hours and receiving the same wages between the dates of April 5 and October 15, 2020. This case is remanded on the separation issue.



---

Blair A. Bennett  
Administrative Law Judge

March 15, 2021  
Decision Dated and Mailed

bab/lj