

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAKE N PHERIGO
Claimant

CASEY'S MARKETING COMPANY
Employer

APPEAL 18A-UI-03396-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 02/04/18
Claimant: Appellant (1)**

Iowa Code § 96.19(38)b – Partial Unemployment
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 8, 2018, (reference 01) unemployment insurance decision that denied benefits based on his continued part-time employment at the same hours and wages contemplated at the time of hire. The parties were properly notified of the hearing. A telephone hearing was held on April 9, 2018. The claimant participated and testified. Martha Pherigo was also present as claimant's non-attorney representative and testified. The employer participated through Store Manager Renee Ellsworth. Shanda Volker was also present on behalf of the employer, but did not testify.

ISSUES:

Is the claimant partially unemployed and available for work?

If so, is the employer's account liable for potential charges?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working on a part-time basis for this employer on April 28, 2017. At the time he was hired, claimant was told to expect between 20-25 hours per week, but no hours were guaranteed, as scheduling is based on the current need of the employer. Claimant had been working between 20 and 30 hours per week from the time of his hire until November 2017. At that time claimant's hours were reduced down to approximately 17 hours per week, but by early February 2018, he was only scheduled three hours every two weeks. Ellsworth testified the hour reduction went into effect for all employees, according to the employer's needs. This employer is claimant's only base-period employer.

REASONING AND CONCLUSIONS OF LAW:

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

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.

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, the claimant is not considered to be unemployed within the meaning of the law. When an individual is hired to work part-time or in a temporary assignment, 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 is currently employed under the same hours and wages as contemplated at hire or assignment placement, he is not considered partially unemployed.

DECISION:

The March 8, 2018, (reference 01) unemployment insurance decision is affirmed. The claimant is not partially unemployed and benefits are denied.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs