

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JASON D YOUNG
Claimant

MC SOIFER'S INC
Employer

APPEAL 18A-UI-03413-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 02/11/18
Claimant: Respondent (2)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(26) – Availability Disqualifications
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment

STATEMENT OF THE CASE:

The employer filed an appeal from the March 8, 2018, (reference 01) unemployment insurance decision that allowed benefits based upon a reduction of hours. The parties were properly notified about the hearing. A telephone hearing was held on April 9, 2018. Claimant did not register for the hearing and did not participate. Employer participated through director of operations Randy Betsinger and general manager Shawn Sorenson.

ISSUES:

Is the claimant eligible for partial unemployment insurance benefits?
Is the claimant able to work and available for work effective February 11, 2018?
Is claimant still employed at the same hours and same wages?
Is the employer's account subject to charge?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on April 24, 2017. Claimant was initially hired to work on a full-time basis as a general crew member. On approximately November 13, 2017, claimant took on a second job and requested to only work the night shift. This caused a reduction in his hours to approximately 18 to 23 hours per week. Claimant was not guaranteed a set amount of hours.

Claimant filed a claim for benefits with an effective date of February 11, 2018. During the week ending February 17, 2018, claimant only worked one hour for employer. Claimant was offered two additional shifts that week, but he declined both of them.

During the week ending February 24, 2018, claimant worked ten hours.

During the week ending March 3, 2018, claimant worked five hours.

During the week ending March 10, 2018, claimant worked at least 20 hours.

A reference 03 unemployment insurance decision has been issued finding claimant not able to and available for work effective March 11, 2018. Claimant has appealed the decision, but a hearing has not yet been scheduled.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not considered to be partially unemployed from February 18, 2018, through March 11, 2018.

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.

Iowa Admin. Code r. 871-24.23(26) provides:

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

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

Under Iowa Employment Security Law, an individual must be totally or partially unemployed to be eligible for benefits. Iowa Code § 96.19(38). Total unemployment is when someone has received no wages and performed no services during any given week. *Id.* In this case, the claimant has performed services and earned wages for each week he is claiming benefits. He is not totally unemployed.

The next question is whether he was partially unemployed from the effective date of his claim through March 11, 2018. In order to be partially unemployed, an individual must be laid off from full-time employment or working less than his or her regular full-time work week. *Id.* If an individual is employed in a part-time position working the same hours and wages as contemplated at hire, he or she cannot be considered partially unemployed. Iowa Admin. Code r. 871-24.23(26). The claimant was transferred into a part-time position with fluctuating hours at his request. He has worked part-time hours since November 2017, and his hours have fluctuated as was the expectation when he made the request. He continued to work for employer on a part-time basis after filing this claim. As the claimant continued working in a part-time job in the same hours and wages contemplated at the time of transfer, the claimant is not partially unemployed and is not eligible for benefits.

As the claimant is not partially unemployed nor has he had any weeks of total unemployment during the relevant time period, the issues of his availability for work and the chargeability of the employer's account are moot and will not be discussed further in this decision.

DECISION:

The March 8, 2018, (reference 01) unemployment insurance decision is reversed. The claimant was not partially unemployed from the effective date of his claim through March 11, 2018. Benefits are denied during that time period. The issues of whether claimant was available for work and the employer's account should be charged for benefits paid during that time period are moot as claimant is not eligible for benefits.

Christine A. Louis
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Decision Dated and Mailed

cal/scn