

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MICHELL T WILLIAMS
Claimant

FMC/MARC INC ARBIES
Employer

APPEAL 14A-UI-08691-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/20/14
Claimant: Respondent (2/R)

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 § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

The employer filed an appeal from the August 13, 2014 (reference 01) unemployment insurance decision that allowed benefits based upon being available for work. The parties were properly notified about the hearing. A telephone hearing was held on September 10, 2014. Claimant did not respond to the hearing notice instruction and did not participate. Employer participated through Theresa Ingle, Assistant Manager. Thomas Kuiper, of Equifax/Talx, represented the employer.

ISSUE:

Is the claimant partially unemployed and available for work effective July 20, 2014?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant is employed part time, as she has been throughout her employment with this employer. She has no other employment in the base period. She transferred from the store in Waukee, Iowa on July 14, 2014 to the store on NE 14th Street in Des Moines because of transportation problems. There is no bus service to the store in Waukee from claimant's residence on 2nd Avenue in Des Moines. Bus service is available to the store on NE 14th Street. Claimant's wage has been \$8.50 an hour since at least the second quarter of 2013. The first week claimant started work at the Des Moines store she did not get in touch with Ingle until she showed up for work. Claimant did not respond to requests for her to work extra hours.

| 2nd Qtr 2013 | 3rd Qtr 2013 | 4th Qtr 2013 | 1st Qtr 2014 | 2nd Qtr 2014 |
|--------------|--------------|--------------|--------------|--------------|
| \$2,609.00 | \$3,502.00 | \$3,517.00 | \$3,479.00 | \$3,549.00 |
| 306 hours | 412 hours | 413 hours | 409 hours | 417 hours |

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 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 § 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, 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.

An individual shall be deemed partially unemployed in any week in which 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.

There was not a reduction in hours established since the transfer from the Waukee store to the Des Moines store. Any limitation of hours was triggered by claimant's inability to work the available or extra hours. Because she does not have full-time base-period wages and the level of employment is consistent with the base-period wage history with this employer, she may not be considered partially unemployed and the availability for work is moot.

DECISION:

The August 13, 2014 (reference 01) unemployment insurance decision is reversed. The claimant is not partially unemployed and benefits are denied.

REMAND:

The overpayment and fact-finding participation issues, pursuant to Iowa Code § 96.3(7) and Iowa Admin. Code r. 871-24.10 respectively, are remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination because claimant did not participate in this hearing that addressed the availability for work or partial unemployment issues.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

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