

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**MEAGAN A SAWYER**  
Claimant

**APPEAL 17A-UI-08320-CL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**NEW CHOICES INCORPORATED**  
Employer

**OC: 09/11/16**  
**Claimant: Respondent (4)**

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

**STATEMENT OF THE CASE:**

The employer filed an appeal from the August 8, 2017, (reference 03), unemployment insurance decision that allowed benefits based upon a reduction of hours. After due notice was issued, a telephone conference hearing was scheduled to be held on September 1, 2017. Claimant participated. Employer participated through human resources coordinator Heather Bulten. Human resources assistant Krissy Ronnfeldt observed.

**ISSUES:**

Does the claimant meet the definition of being considered partially unemployed?  
Is the claimant still employed at the same hours and wages?  
Is the claimant able to and available for work effective July 30, 2017?  
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: The claimant was hired on November 13, 2016, to work for employer as a part-time direct support professional. Employer never guaranteed claimant she would work a certain amount of hours per week.

On average claimant worked 20 hours per week until her hours were reduced effective July 30, 2017. Claimant's hours were reduced because an assignment was ended due to her tardiness. Claimant immediately requested a new assignment/additional hours. Claimant indicated she was available from 9:00 a.m. until 12:00 a.m. every day. However, the scheduler did not assign her additional hours until she met with her on August 9, 2017.

Claimant worked no hours during the one week ending August 5, 2017.

Claimant worked one and one-half hour during the one week ending August 12, 2017.

Claimant was paid for seven hours of work during the one week ending August 19, 2017.

Claimant was paid for six and one-half hours of work during the one week ending August 26, 2017.

Employer is not a base period employer.

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

For the reasons that follow, the administrative law judge concludes the claimant was totally unemployed during the week ending August 5, 2017, and eligible for benefits during that week. Claimant was not partially or totally unemployed or eligible for benefits thereafter.

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.

Because the claimant was totally unemployed during the one week ending August 5, 2017, and was available for work, she is entitled to benefits that week. Although her hours were reduced due to tardiness, that is a discipline issue and not an availability issue.

Employer resumed assigning claimant part-time hours the week beginning August 6, 2017. Employer did not guarantee claimant she would work a certain number of hours per week when hired and only guaranteed her part-time hours. Since claimant is working on the same basis as contemplated at the contract for hire, she is not eligible for benefits effective August 6, 2017.

The employer is not a base period employer and will not be charged for benefits paid to claimant during this claim year. Therefore the issue regarding charges to the employer account is moot and will not be discussed further in this decision.

**DECISION:**

The August 8, 2017, (reference 03) unemployment insurance decision is modified in favor of appellant. The claimant was totally unemployed during the one week ending August 5, 2017, and is eligible for benefits that week. Claimant is not partially or totally unemployed effective August 6, 2017, and benefits are denied thereafter.

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Christine A. Louis  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515)478-3528

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Decision Dated and Mailed

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