

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

SHANTOYA S ROBINSON
Claimant

APPEAL NO. 15A-UI-10690-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**MASON CITY INNS LLC
COUNTRY INN & SUITES**
Employer

OC: 08/30/15
Claimant: Appellant (4)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Shantoya Robinson filed a timely appeal from the September 23, 2015, reference 02, decision that denied benefits effective September 20, 2015, based on an Agency conclusion that Ms. Robinson was not partially unemployed within the meaning of law from her employment at Country Inn & Suites. After due notice was issued, a hearing was held on October 8, 2015. Ms. Robinson participated. Todd Hungerford, General Manager, represented the employer. Exhibit One, Ms. Robinson's Employee Earnings Record for March 1, 2015 through October 9, 2015, was received into evidence. The administrative law judge took official notice of the September 22, 2015, reference 01, decision that allowed benefits to Ms. Robinson provided she was otherwise eligible, based on an Agency conclusion that Ms. Robinson had been discharged from employment with Midwest Homestead of Mason City on August 28, 2015 for no disqualifying reason. The administrative law judge took official notice of the following Agency administrative records: DBRO, KCCO, WAGE-A.

ISSUES:

Whether Ms. Robinson has been able to work and available for work within the meaning of the law since she established the claim for benefits that was effective August 30, 2015.

Whether Ms. Robinson has been partially unemployed within the meaning of the law since she established the claim for benefits that was effective August 30, 2015.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Shantoya Robinson established an original claim for benefits that was effective August 30, 2015, but has not received benefits in connection with the claim. Workforce Development has calculated Ms. Robinson's weekly benefit amount at \$248.00. In other words, that would be the maximum amount that could be disbursed to Ms. Robinson for any week of the claim for which she meets all eligibility requirements.

Ms. Robinson's base period employers for purpose of the claim include Mason City Inns, L.L.C., doing business as Country Inn & Suites, which employed is the named employer in interest in the present matter.

Ms. Robinson's based period employers also include Midwest Homestead of Mason City from whom Ms. Robinson separated on August 28, 2015. On September 22, 2015, a Workforce Development claims deputy entered a reference 01 decision that allowed benefits to Ms. Robinson, provided she was otherwise eligible, based on an Agency conclusion that Ms. Robinson had been discharged from employment with Midwest Homestead of Mason City on August 28, 2015 for no disqualifying reason. Though Ms. Robinson's employment at Midwest Homestead ended on August 28, 2015, she had only worked four days for that employer during the month of August and been on a leave from that employment during July 2015, during the time she was working the increased hours for Country Inn & Suites. Prior to that time, Ms. Robinson had been working full time or near full-time hours for Midwest Homestead. The hours at Midwest Homestead were 6:00 a.m. to 2:00 p.m.

Ms. Robinson began her employment with Mason City Inns, L.L.C., doing business as Country Inn & Suites, on February 19, 2015. Todd Hungerford, General Manager, hired Ms. Robinson to work as a part-time breakfast attendant. Mr. Hungerford told Ms. Robinson that the work hours could vary from week to week, but would include shifts on every other weekend and one or two shifts Monday through Friday. Mr. Hungerford told Ms. Robinson that the weekday start time was 5:00 a.m. and the weekend start time was 6:00 a.m. and that on most days Ms. Robinson would be done by noon. At the time of hire, Ms. Robinson expressed interest in a front desk position. Mr. Hungerford told Ms. Robinson that a front desk position might be possible in the future if one opened up and if Ms. Robinson performed her breakfast attendant duties well. Ms. Robinson's starting wage was \$9.50 per hour.

For the first few months of the employment, Ms. Robinson's work hours followed the pattern described by Mr. Hungerford at the start of the employment. Ms. Robinson's work hours increased in June 2015, after the full-time breakfast attendant commenced a medical leave. At that time, Ms. Hungerford began working full-time hours with the same start time. Ms. Robinson would get done between noon and 1:00 p.m. The employer increased Ms. Robinson's wage to \$10.50 per hour. Ms. Robinson knew at the time the hours increased that he increase was based on the absence of her coworker and that the coworker was expected to return to the employment. At the end of July or beginning of August, the full-time breakfast attendant returned to work and Ms. Robinson's breakfast attendant hours were reduced back to where they were before the coworker went on leave.

In June, in response to Ms. Robinson's willingness to step in for the full-time breakfast attendant Mr. Hungerford spoke to Ms. Robinson about his desire to continue to make full-time hours available to Ms. Robinson after the full-time breakfast attendant returned and to do so by having Ms. Robinson cross-train at the front desk. Mr. Hungerford told Ms. Robinson's that the hours available at the front desk would vary and could include day shifts, evening shifts and weekend shifts. At the time of the discussion on June, Ms. Robinson did not raise any concerns about the employer's proposal to provide her with additional work hours by having her work at the front desk. Ms. Robinson did not at that time raise any concerns about restrictions on her availability.

In August, Mr. Hungerford spoke to Ms. Robinson again about working at the front desk. Mr. Hungerford told Ms. Robinson that a front desk employee had given their two-week notice and that some 3:00 p.m. to 11:00 p.m. and 3:00 p.m. to 8:00 p.m. shifts would be available. Mr. Hungerford knew that Ms. Robinson was by that time going through the breakup of her marriage. Ms. Robinson has an eight-year-old daughter. Ms. Robinson is from Indiana. Ms. Robinson has no other family in the Mason City area other than her child and her estranged husband. Ms. Robinson told Mr. Hungerford that she would have to see whether she could arrange childcare so that she could work in the evening. Mr. Hungerford asked whether Ms. Robinson's husband could assist with childcare. Ms. Robinson checked with her husband, who refused to assist with childcare so that Ms. Robinson could work the evening hours. Ms. Robinson reported back to Assistant Manager Cassie Crum that she could not accept

evening shifts at the front desk due to a lack of child care. Until recently, Ms. Robinson continued to be available for the daytime breakfast attendant hours.

On the weekend of October 3-4, 2015, Ms. Robinson told Ms. Crum that she could no longer work Sundays due to a lack of childcare. Ms. Robinson further restricted her availability at that time by indicating that she could only work Wednesdays and Saturdays. Ms. Robinson cited her need to get her child on the bus in the morning as the basis for restricting her work availability during the weekdays.

Ms. Robinson has sought public assistance with her childcare expense and had learned that she must work at least 30 hours per to qualify for the assistance. Ms. Robinson's current work schedule does not satisfy the requirement. Ms. Robinson asserts that she would be available to work from 7:15 to 3:00 p.m., Monday through Friday, if she could meet the 30-hour per week requirement to qualify for public assistance for childcare.

After Ms. Robinson established her claim for unemployment insurance benefits, she made two job contacts per week for the three weeks between August 30, 2015 and September 19, 2015. Ms. Robinson only made one job contact during the week that ended July 26, 2015, but reported that she had made two job contacts when she made her weekly claim report. During the week that ended October 3, 2015, Ms. Robinson did not make any job contacts, but reported two job contacts when she made her weekly claim report. On the day of the appeal hearing, Thursday, October 8, 2015, Ms. Robinson reported that she had not made any job contacts for that week of October 4-10, 2015.

Since Ms. Robinson established her claim for benefits, she has not been accurately reporting her wages when she has made her weekly claim reports. Ms. Robinson reported zero wages when she made her claims for the five weeks between August 30, 2015 and October 3, 2015. The employer utilizes a two-week pay period and was only able to provide total work hours and wages for Ms. Robinson for the two-week pay periods without any further detail. The employer utilizes a Monday through Sunday work week for payroll purposes and issues paychecks on the Friday following the close of the two-week pay period.

Pursuant to the employer's payroll records, Ms. Robinson's total hours worked and total wages pay have been as follows:

Check date	Pay Period	Hours Worked	Gross Wages
3/6	2/17-3/1	28.90	274.55
3/20	3/2-3/15	35.55	337.173
4/3	3/16-3/29	40.84	387.98
4/17	3/30-4/12	29.48	280.06
5/1	4/13-4/26	35.14	333.83
5/15	4/27-5/10	29.19	277.31
5/29	5/11-5/24	30.86	293.17
6/12	5/25-6/7	60.28	632.74
6/26	6/8-6/21	58.99	604.65
7/10	6/22-7/5	78.5	872.48
7/24	7/6-7/19	68.12	702.89
8/7	7/20-8/2	54.80	563.70
8/21	8/3-8/16	62.24	653.52
9/4	8/17-8/30	37.85	397.43
9/18	8/31-9/13	35.02	369.45
10/2	9/14-9/27	34.72	364.56

The available information concerning hours worked and wages paid for the period that coincides with Ms. Robinson's claim for unemployment insurance benefits, corresponds to the following benefit week information:

<u>Week ending date</u>	<u>Wages</u>
9/5/15	185.00
9/12/15	185.00
9/19/15	182.00
9/26/15	182.00
10/3/15	Not available

REASONING AND CONCLUSIONS OF LAW:

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 § 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 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 Admin. Code r. 871-24.23(16) and (26) provide:

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

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

(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.

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. Iowa Code section 96.19(38)(b).

Ms. Robinson has not been partially unemployed from Country Inn & Suites since she established her claim for benefits. After the other breakfast attendant returned to work in August 2015, Ms. Robinson's work hours simply returned to what they had been before the injured worker went on leave. In other words, the conditions of the employment went back to the original conditions of the employment. Ms. Robinson understood that the increase in breakfast attendant hours was temporary. That temporary change by its nature did not amount to a permanent change in the conditions of the employment. Thus, Ms. Robinson is not eligible for benefits under the theory that she is partially unemployed. Mason City Inns, L.L.C., will not be charged for benefits paid to Ms. Robinson so long as she continues in the employment and so long as the employer does not reduce her hours or wages from what they were in the original contract of hire. If Ms. Robinson separates from the employment, the employer should notify Workforce Development of that so that Workforce Development can adjudicate the employer's liability and Ms. Robinson's eligibility in connection with the separation.

Because Mason City Inns, L.L.C., was not the sole base period employer or the sole reason for the unemployment insurance claim, the conclusion that Ms. Robinson is not eligible for benefits under a theory of partial unemployment from Mason City Inns, L.L.C., is not the end of the analysis of whether Ms. Robinson is eligible for benefits. Even if she was not partially unemployed from Mason City Inns, Inc., Ms. Robinson is not enjoying the same wages and hours that she enjoyed during her base period when she had multiple employers simultaneously. Ms. Robinson's claim for benefits was triggered in part by the non-disqualifying separation from employer Midwest Homestead. By applying for unemployment insurance benefits, Ms. Robinson was looking, in part, to replace those lost wages. That second employment also involved daytime work hours. Because the base period wage credits were based a history of working day hours, Ms. Robinson's lack of availability for evening shifts would not prevent her from being available for work within the meaning of the law. However, restrictions to her availability during her traditional daytime work hours would present a problem.

Ms. Robinson was able to work and available for work within the meaning of the law during the three weeks between August 30, 2015 and September 19, 2015. During those weeks, Ms. Robinson worked the breakfast attendant hours that the Mason City Inns had for her. In addition, during those weeks, Ms. Robinson made at least two employer job contacts. Ms. Robinson is eligible for benefits for the weeks ending September 5, September 12, and September 19, 2015, provided she is otherwise eligible. Ms. Robinson's unreported wages for those weeks, referenced above as \$185.00 for the first two weeks and \$182.00 for the third week, will have to be taken into consideration when determining the appropriate weekly benefit amount to be disbursed for those weeks.

Ms. Robinson did not meet the availability requirement during the week that ended September 26, 2015 because she only made the one job contact and, therefore, did not make the required active and earnest search for new employment to replace the employment with Midwest Homestead.

Ms. Robinson was not available for work within the meaning of the law during the week that ended October 3, 2015 because, according to her sworn testimony, she did not conduct a job search during that week.

Ms. Robinson has not been available for work within the meaning of the law since the week that started October 4, 2015. This is because Ms. Robinson unduly restricted her available for work during her traditional daytime work hours. Ms. Robinson told the employer she could from that point forward only work on Wednesdays and Saturdays. Effective October 4, 2015, Ms. Robinson is ineligible for benefits due to the restriction of her daytime availability.

For any week for which Ms. Robinson attempts to claim benefits, she absolutely must report her correct gross wages and accurately report her job search actions to Workforce Development. The evidence in the record indicated that Ms. Robinson failed to accurately report at least five weeks of wages and had two or more weeks where she misrepresented the number of job contacts. Such actions could lead to serious legal consequences.

DECISION:

The September 23, 2015, reference 02, is modified as follows. The claimant has not been partially unemployed from Mason City Inn, L.L.C., since she established her claim. That employer's account will not be charged for benefits, so long as the employer does not diminish the number of work hours or the wages to less that existed toward the start of the employment.

The claimant was able to work and available for work within the meaning of the law during the three weeks between August 30, 2015 and September 19, 2015. The claimant is eligible for benefits for the weeks ending September 5, September 12, and September 19, 2015, provided she is otherwise eligible. Wages of \$185.00 shall be applied to the week ending September 5 and the week ending September 12. Wages of \$182.00 shall be applied to the week ending September 19, 2015.

The claimant was not available for work during the weeks that ended September 26 and October 3, 2015, and not eligible for benefits for those weeks, because she did not make an active and earnest search for work during those weeks.

Effective October 4, 2015, the claimant has not been available for work within the meaning of the law, and is not eligible for benefits, because she has unduly restricted her availability for work during her traditional daytime work hours.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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