

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**TWANA SPACE**  
Claimant

**CULL-MAC OF IOWA INC**  
Employer

**APPEAL 17A-UI-03354-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/26/17  
Claimant: Respondent (1R)**

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

**STATEMENT OF THE CASE:**

The employer filed an appeal from the March 16, 2017, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on April 25, 2017. Claimant did not participate. Employer participated through Tricia Ploessl, Co-Manager.

**ISSUE:**

Is the claimant able to and available for work?

Is the claimant partially unemployed, and if so, can the employer's account be relieved of charges?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time as a crew member beginning on June 9, 2016. The claimant was paid \$9.50 per hour. Agency records illustrate that she was paid gross wages for the third quarter of 2016 in the amount of \$5,189.00. She worked an average of 42 hours per week during that quarter. For the fourth quarter of 2016 the claimant was paid gross wages of \$4,205.00. She worked an average 34 hours per week. The claimant was working full time hours during her first two quarters of employment.

On January 19, 2017 the claimant broke her foot in a non-work related incident. She was off work for a month to heal and during that time period made no claim for unemployment insurance benefits. The claimant returned to work with a full release from her doctor on February 20, 2017. She did not ask for a reduction in her days or hours of work. Her doctor did not require she work fewer hours or days. The employer reduced the claimant's days and hours of work when they decided she would not be scheduled any more than three days per week and no more than four hours per day.

The claimant was separated from her employment on April 1, 2017. No fact-finding or initial determination has been issued by the Unemployment Insurance Service Center (UISC) regarding the claimant's separation from this employer.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant is partially unemployed effective February 26, 2017.

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 the claimant was not employed under the same hours and wages as contemplated at hire, she is considered partially unemployed. Benefits may be allowed based upon reporting of weekly earnings. For whatever period the employer is not offering the same wages and hours as contemplated in the contract of hire, it may be liable for benefit charges to its account.

**REMAND:**

The separation issue set out in the findings of fact is remanded to the UISC for an initial review and determination.

**DECISION:**

The March 16, 2017, (reference 01) decision is affirmed. The claimant was partially unemployed and benefits are allowed, provided she is otherwise eligible. She is required to report gross wages earned for each week of benefits claimed. The employer's account (080023) may be liable for charges.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/rvs