

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AMANDA K DEUTSCH
Claimant

APPEAL 18A-UCFE-00007-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 03/26/17
Claimant: Appellant (3)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions
Iowa Code § 96.19(38) – Total and Partial Unemployment

STATEMENT OF THE CASE:

Amanda K. Deutsch (claimant) filed an appeal from the January 19, 2018, reference 07, unemployment insurance decision that denied benefits based upon the determination she was not actively and earnestly seeking work for the week ending December 30, 2017. After due notice was issued, a telephone conference hearing was held on February 21, 2018. The claimant participated. The claimant waived notice on the issue of total and partial unemployment under Iowa Code § 96.19(38) during the hearing.

ISSUES:

Was the claimant able to work, available for work, and actively and earnestly seeking work the week ending December 30, 2017?

Was the claimant partially unemployed effective December 24, 2017?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant is a part-time City Carrier Assistant who does not work a set schedule and she was told when she moved to the position that her hours would vary. She filed an original claim for benefits with an effective date of March 26, 2017 and a reopened date of December 24, 2017. She was laid off from work December 18 through December 22, 2017. She was not assigned any work until Friday, December 29, 2017, and she reported her wages earned that week. She then worked the following week earning \$323.00 in wages, which were reported to Iowa Workforce Development (IWD).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not partially or totally unemployed effective December 24, 2017. The issues of her ability to work, availability for work, and active and earnest work search are moot. Benefits are denied.

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.

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.

Iowa Admin. Code r. 871-24.22(3) provides, in relevant part:

Benefit 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.

(3) Earnestly and actively seeking work. Mere registration at a workforce development center does not establish that the individual is earnestly and actively seeking work. It is essential that the individual personally and diligently search for work. It is difficult to establish definite criteria for defining the words earnestly and actively. Much depends on the estimate of the employment opportunities in the area. The number of employer contacts which might be appropriate in an area of limited opportunity might be totally unacceptable in other areas. When employment opportunities are high an individual may be expected to make more than the usual number of contacts. Unreasonable limitations by an individual as to salary, hours or conditions of work can indicate that the individual is not earnestly seeking work. The department expects each individual claiming benefits to conduct themselves as would any normal, prudent individual who is out of work.

a. Basic requirements. An individual shall be ineligible for benefits for any period for which the department finds that the individual has failed to make an earnest and active search for work. The circumstances in each case are considered in determining whether an earnest and active search for work has been made. Subject to the foregoing, applicable actions of the following kind are considered an earnest and active search for work if found by the department to constitute a reasonable means of securing work by the individual, under the facts and circumstances of the individual's particular situation:

(1) Making application with employers as may reasonably be expected to have openings suitable to the individual.

(2) Registering with a placement facility of a school, college, or university if one is available in the individual's occupation or profession.

(3) Making application or taking examination for openings in the civil service of a governmental entity with reasonable prospects of suitable work for the individual.

(4) Responding to appropriate "want ads" for work which appears suitable to the individual if the response is made in writing or in person or electronically.

(5) Any other action which the department finds to constitute an effective means of securing work suitable to the individual.

(6) No individual, however, is denied benefits solely on the ground that the individual has failed or refused to register with a private employment agency or at any other placement facility which charges the job-seeker a fee for its services. However, an individual may count as one of the work contacts required for the week an in-person contact with a private employment agency.

(7) An individual is considered to have failed to make an effort to secure work if the department finds that the individual has followed a course of action designed to discourage prospective employers from hiring the individual in suitable work.

b. Number of employer contacts. It is difficult to determine criteria in which earnestly and actively may be interpreted. Much depends on the estimate of employment opportunities in the area. The number of employer contacts which might be appropriate in an area of limited opportunities might be totally unacceptable in another area of unlimited opportunities. The number of contacts that an individual must make is dependent upon the condition of the local labor market, the duration of benefit payments, a change in the individual's characteristics, job prospects in the community, and other factors as the department deems necessary.

The claimant was found not eligible for benefits for the one-week period ending December 30, 2017 because she had not conducted an active and earnest work search. The claimant argued that she was not required to conduct a job search because she was temporarily laid off under Iowa Code § 96.19(38)(c). However, before it can be determined whether the claimant is required to be able to work, available for work, and actively and earnestly seeking, it must be determined whether she is totally or partially unemployed for each week she is claiming benefits effective December 24, 2017.

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 both weeks she has claimed benefits after December 24, 2017. She was not totally unemployed during that time.

The next question is whether she is partially unemployed. 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 hired into a part-time position effective December 18, 2017. She was not given a set schedule and knew that her hours would vary each week. She continues to work for the employer. As the claimant is working in a part-time job in the same hours and wages contemplated at hire, or agreed to, the claimant is not partially unemployed and is not eligible for benefits.

As the claimant is not partially unemployed nor was she totally unemployed effective December 24, 2017, the issues of whether she is able to work, available for work, and actively and earnestly seeking work for the two-week period ending January 6, 2018 are moot.

DECISION:

The January 19, 2018, reference 07, unemployment insurance decision is modified in favor of the respondent. The claimant is not partially unemployed and benefits are denied effective December 24, 2017. The issues of whether she is able to work, available for work, and actively and earnestly seeking work for the two-week period ending January 6, 2018 are moot at this time.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

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