

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

HEATHER R MADDEN
Claimant

HOPE HAVEN INC
Employer

APPEAL 22A-UI-03472-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/19/21
Claimant: Appellant (2R)**

Iowa Code § 96.1A(37) – Total, partial unemployment
Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search
Iowa Admin. Code r. 871-24.23(26) – Eligibility – A&A – Part-time same hours, wages
Iowa Code § 96.7(2)a(2) – Charges – Same base period employment

STATEMENT OF THE CASE:

On January 20, 2022, Heather Madden (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated January 14, 2022 (reference 01) that denied unemployment insurance benefits as of December 19, 2021 based on a finding claimant was still employed in an on-call job and therefore not available for work.

A telephone hearing was held on March 10, 2022. The parties were properly notified of the hearing. Claimant participated personally. Hope Haven Inc. (employer/respondent) participated by Community Living Manager Nytasha Trog.

Employer's Exhibits 1-3 were admitted. Official notice was taken of the administrative record.

ISSUE(S):

- I. Is the claimant totally, partially, or temporarily unemployed?
- II. Is the claimant able to and available for work?
- III. Is the claimant still employed at the same hours and wages? Is the employer's account subject to charge? Is the claimant an on-call worker?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant began working for employer on October 28, 2015. Claimant is still employed by employer in an on-call status. Claimant moved to the on-call status on August 5, 2021. Claimant moved to the on-call status because she was beginning full-time employment elsewhere. Claimant began full-time employment as an assistant teacher for Upper Des Moines Opportunity on August 9, 2021. She is still employed there. There was no work available for her there from

December 21, 2020 until January 3, 2022. Claimant picked up shifts with employer on December 31, 2021 and January 2, 2022.

Claimant filed a claim for benefits in the weeks ending December 25, 2021 and January 1, 2022. Claimant reported the wages she earned each week when filing. She earned \$94.00 in the week ending December 25, 2021 and \$120.00 in the week ending January 1, 2022. Her weekly benefit amount is \$477.00.

The issue of whether Upper Des Moines Opportunity is an educational employer and whether claimant is eligible for benefits between academic years or terms has not yet been the subject of a fact-finding interview and determination.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the decision dated January 14, 2022 (reference 01) that denied unemployment insurance benefits as of December 19, 2021 based on a finding claimant was still employed in an on-call job and therefore not available for work is REVERSED.

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 96.1A(37) 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 Code section 96.7(2)a(2) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

The administrative law judge finds claimant was partially unemployed in the weeks filed, as she was still employed at her regular job but earning less than her weekly benefit amount plus \$15.00. Because claimant was partially unemployed in those weeks the ability to work, availability to work, and work search requirements are waived. Claimant was therefore eligible for benefits in those weeks. Employer's account shall not be charged, as claimant remained employed in their on-call capacity during the weeks filed.

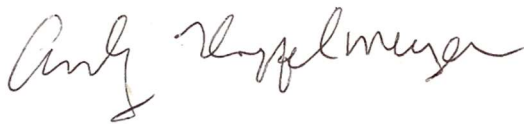
However, the issue of whether Upper Des Moines Opportunity is an educational employer and whether claimant is eligible for benefits between academic years or terms has not yet been the subject of a fact-finding interview and determination. That matter must be remanded to the Department. See Iowa Code 96.4(5).

DECISION:

The decision dated January 14, 2022 (reference 01) that denied unemployment insurance benefits as of December 19, 2021 based on a finding claimant was still employed in an on-call job and therefore not available for work is REVERSED. Claimant is eligible for benefits in the weeks filed. Employer's account shall not be charged.

REMAND:

The issue of whether Upper Des Moines Opportunity is an educational employer and whether claimant is eligible for benefits between academic years or terms has not yet been the subject of a fact-finding interview and determination. That issue must be remanded to the Department.



Andrew B. Duffelmeyer
Administrative Law Judge
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March 18, 2022
Decision Dated and Mailed

abd/abd