

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KENDRA S HAPPE
Claimant

APPEAL 20A-UI-13071-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SHRI NILKANTH LLC
Employer

OC: 04/12/20
Claimant: Respondent (4/R)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions
Iowa Admin. Code r. 871-24.23(26) – Available – Part-time Same Wages and Hours
Iowa Code § 96.19(38) – Total, Partial, and Temporary Unemployment
Iowa Code § 96.7(2)a(2) – Employer Chargeability

STATEMENT OF THE CASE:

On October 22, 2020, Shri Nilkanth, LLC (employer) filed an appeal from the October 15, 2020, reference 02, unemployment insurance decision that allowed benefits effective April 12, 2020, based upon the determination Kendra S. Happe was partially unemployed. After due notice was issued, a telephone hearing was held on January 5, 2021. The claimant did not respond to the hearing notice and did not participate. The employer participated through Amy Mortensen Human Resources/Payroll. The employer's Exhibit 1 was admitted into the record. The administrative law judge took official notice of the administrative record, specifically the claimant's claim history.

ISSUES:

Is the claimant totally, partially, or temporarily unemployed?
Was the claimant able to and available for work effective April 12, 2020?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began working for the employer on March 12, 2018, as a part-time Front Desk Clerk. However, since January 1, 2019, she has worked full-time hours. The claimant is still employed, and she currently earns \$11.00 an hour.

The claimant filed her claim for benefits effective April 12, 2020, and the weekly benefit amount is \$293.00. She filed weekly claims for benefits from April 12 through the week ending July 18, and she reported wages earned each week. The following table shows the gross wages the claimant reported; the hours worked, according to the employer's records; and, the gross wages earned, calculated by multiplying the hours worked by the claimant's rate of pay:

Week Ending	Wages Reported	Hours Worked	Wages Earned
04/18/20	\$300	30.16	\$331.76
04/25/20	\$300	29.47	\$324.17
05/02/20	\$320	38.94	\$428.34
05/09/20	\$360	39.45	\$433.95
05/16/20	\$88	8.13 and 31 hours of Covid pay	\$430.43
05/23/20	\$320	32.17	\$353.87
05/30/20	\$420	46.33	\$544.45
06/06/20	\$444	35.95	\$395.45
06/13/20	\$88	8.23	\$90.53
06/20/20	\$306	28.25	\$310.75
06/27/20	\$291	40.41	\$446.77
07/04/20	\$429	39.99	\$439.89
07/11/20	\$290	26.96	\$296.56
07/18/20	\$320	39.03	\$429.33

During the week ending June 13, the claimant notified the employer she was unavailable to work six of the seven days because she was going on vacation. During the week ending July 11, the claimant requested to have four of the seven days off for the holiday. The employer had work available to the claimant during those weeks.

Whether the claimant has been overpaid regular benefits or Federal Pandemic Unemployment Compensation (FPUC) and should be subject to penalty due to misrepresentation has not yet been investigated or adjudicated by the Benefits or Integrity Bureaus.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not unemployed according to Iowa law for most of the weeks and she was not able to and available for work during the weeks ending June 13 and July 11, 2020. Benefits are denied effective April 12, 2020.

Iowa Code section 96.2 provides, in relevant part:

Guide for interpretation.

As a guide to the interpretation and application of this chapter, the public policy of this state is declared to be as follows: Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and lighten its burden which now often falls with crushing force on the unemployed worker and the worker's family. ... The legislature, therefore, declares in its considered judgement the public good and the general welfare of the citizens of this state require the enactment of this measure, under the police powers of the state, for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own. [Emphasis added.]

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:

Definitions.

38. 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. 871-24.22(2)j provides:

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.

(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.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

Iowa Admin. Code r. 871-24.23 provides, in relevant part:

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

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

...

(25) If the claimant is out of town for personal reasons for the major portion of the workweek and is not in the labor market.

Under Iowa Employment Security Law, an individual must be unemployed to be eligible for unemployment insurance benefits. Iowa Code § 96.19(38). Total and temporary unemployment occur when an individual 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 each week she has claimed benefits. She is not totally or temporarily unemployed.

The next question is whether she was 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 earning less than their weekly benefit amount plus fifteen dollars. *Id.* The claimant's weekly benefit amount is \$293.00 and the threshold for partial unemployment is \$308.00. The claimant earned over \$308.00 from April 18 through June 6, June 14 through July 4, and week ending July 18. Therefore, she was not partially unemployed and ineligible for unemployment insurance benefits.

The claimant had two weeks that she earned less than \$308.00, the weeks ending June 13 and July 11. An individual claiming benefits has the burden to prove that she is able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. The claimant worked fewer than her normal hours because she was out of town or had requested leave. The employer had her regular hours available. Accordingly, she is not eligible for unemployment insurance benefits those two weeks because she was voluntarily underemployed and not because the employer lacked work.

DECISION:

The October 15, 2020, reference 02, unemployment insurance decision is modified in favor of the appellant. The claimant is not eligible for benefits effective April 12, 2020, because she was not unemployed under Iowa law or she was voluntarily underemployed and not able to and available for work. Benefits are denied.

REMAND:

Whether the claimant has been overpaid regular benefits or FPUC, as delineated in the findings of fact, and should be subject to penalty due to misrepresentation is remanded to the Benefits or Integrity Bureau for an investigation and determination.



Stephanie R. Callahan
Administrative Law Judge

January 22, 2021
Decision Dated and Mailed

src/mh

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to self-certify for PUA to determine your eligibility under the program.** Additional information on how to self-certify for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.