

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SAVANNA M WESTERFIELD

Claimant

APPEAL 21A-UI-07846-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

GRAPETREE MEDICAL STAFFING INC

Employer

OC: 01/10/21

Claimant: Appellant (5)

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

STATEMENT OF THE CASE:

Claimant filed an appeal from the March 22, 2021 (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on May 27, 2021, at 2:00 p.m. Claimant participated. Employer participated through Danielle Einck, Human Resources Specialist. No exhibits were admitted. Official notice was taken of the administrative record.

ISSUES:

Whether claimant is totally, partially or temporarily unemployed.
Whether claimant is able to and available for work.
Whether claimant is still employed at the same hours and wages.
Whether employer's account is subject to charge.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began employment with Grapetree Medical Staffing on December 4, 2017. Claimant works as a PRN Certified Nurse Assistant (CNA). Claimant is not guaranteed hours.

Claimant filed an initial claim for benefits effective January 10, 2021. Claimant has worked five days for employer since filing her initial claim. Employer had other shifts available for claimant to work.

Claimant's vehicle broke in November 2020. Since that time, claimant has relied on family members for work-related transportation. Claimant's family members are not always available to take claimant to work. Claimant has two children who were required to quarantine from school due to Covid-19 from March 5, 2021 until March 30, 2021 and from April 8, 2021 until April 28, 2021; claimant does not have alternate childcare for the children.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes:

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 96.4(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 96.1A, subsection 37, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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 Admin. Code r. 871-24.23(4), (8), (26) provide:

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

(4) If the means of transportation by an individual was lost from the individual's residence to the area of the individual's usual employment, the individual will be deemed not to have met the availability requirements of the law. However, an individual shall not be disqualified for restricting employability to the area of usual employment. See subrule 24.24(7).

(8) Where availability for work is unduly limited because of not having made adequate arrangements for child care.

(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 claiming benefits has the burden of proof that she is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

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.

(b) An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(c) The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

During the weeks since January 10, 2021 when claimant performed no work and earned no wages, claimant was totally unemployed. Because claimant was totally unemployed, claimant is required to be able to and available for work. Claimant has the burden of proving that she was able to and available for work. Claimant does not have transportation to and from work and does not have alternate childcare for her children when they were unable to attend school due to quarantine. Claimant has not established that she was available for work. Accordingly, benefits are denied.

During the weeks since January 10, 2021 when claimant performed work for employer, claimant was working PRN. Therefore, claimant was employed under the same hours and wages as contemplated at hire and may not be considered partially unemployed. Benefits are denied.

Inasmuch as employer is offering the same wages and hours as contemplated at hire, no benefit charges shall be made to its account.

DECISION:

The March 22, 2021 (reference 02) unemployment insurance decision is modified with no change in effect. While claimant was totally unemployed, she was not able to and available for work; benefits are denied. While claimant was working, she was employed under the same PRN hours as contemplated at hire and, thus, was not partially unemployed; benefits are denied. The account of Grapetree Medical Staffing (Account # 306907-000) shall not be charged.



Adrienne C. Williamson
Administrative Law Judge
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June 14, 2021
Decision Dated and Mailed

acw/mh