

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MONICA J MORENO**  
Claimant

**CATHOLIC HEALTH INITIATIVES - IOWA**  
Employer

**APPEAL 21A-UI-05338-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/28/20**  
**Claimant: Appellant (2)**

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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, Partial, and Temporary Unemployment

**STATEMENT OF THE CASE:**

On February 17, 2021, Monica J. Moreno (claimant) filed an appeal from the February 15, 2021, reference 04, unemployment insurance decision that denied benefits effective January 10, 2021, based upon the determination she was still employed with Catholic Health Initiatives – Iowa (employer) in the same hours and wages as the original contract of hire. After due notice was issued, a telephone hearing was held on April 22, 2021. The claimant participated personally. The employer did not respond to the hearing notice and did not participate. No exhibits were offered into the record.

**ISSUES:**

Is the claimant totally, partially, or temporarily unemployed?  
Was the claimant able to work, available for work, and actively and earnestly seeking work effective January 10, 2021?

**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 July 27, 2020, as a part-time Patient Care Technician. She was scheduled to work 24 hours a week. On January 12, 2021, the claimant's employment ended<sup>1</sup>. The claimant does not have any limitations on her ability to and availability for work.

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<sup>1</sup> The claimant's separation was addressed in the March 16, 2021, reference 05, unemployment insurance decision.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was able to work, available for work, and made an earnest search for work effective January 10, 2021. Benefits are allowed, provided she is otherwise eligible.

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 provides, in relevant part:

Benefits 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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

...

b. Interpretation of ability to work. The law provides that an individual must be able to work to be eligible for benefits. This means that the individual must be physically able to work, not necessarily in the individual's customary occupation, but able to work in some reasonably suitable, comparable, gainful, full-time endeavor, other than self-employment, which is generally available in the labor market in which the individual resides.

(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.

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.

The claimant is totally unemployed effective January 10, 2021. Therefore, she 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 does not currently have any limitations on her ability to and availability for work. She has met the burden to establish that she is eligible for benefits on this basis. Benefits are allowed, provided she is otherwise eligible.

**DECISION:**

The February 15, 2021, reference 04, unemployment insurance decision is reversed. The claimant is able to work and available for work effective January 10, 2021. Benefits are allowed, provided she is otherwise eligible.

The claimant is currently ineligible for benefits because of the decision on her separation, which denied benefits.



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Stephanie R. Callahan  
Administrative Law Judge

May 3, 2021  
Decision Dated and Mailed

src/scn