

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**RACHAEL M OELRICH**  
Claimant

**ABC CHILDCARE INC**  
Employer

**APPEAL 20A-UI-12782-SC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/05/20**  
**Claimant: Respondent (2-R)**

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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 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 9, 2020, ABC Childcare, Inc. (employer) filed an appeal from the October 7, 2020, reference 02, unemployment insurance decision that allowed benefits effective May 10, 2020, based upon the determination Racheal M. Oelrich (claimant) was partially unemployed. After due notice was issued, a telephone hearing was held on December 14, 2020 and consolidated with the hearing for appeal 20A-UI-12966-SC-T. The claimant participated. The employer participated through Michelle Frauenholz, Director. The Employer's Exhibit 1 was admitted into the record.

**ISSUES:**

Is the claimant totally, partially, or temporarily unemployed?  
Was the claimant able to and available for work effective May 10, 2020?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer hired the claimant on September 9, 2019, as a part-time Daycare Teacher working 25 to 30 hours a week. On or about April 5, 2020, the claimant requested, and the employer granted, a leave of absence so she could return home to quarantine.<sup>1</sup>

On or about April 26, the claimant notified the employer via text message that she was ready to return to work. The employer was scheduling its employees between 15 and 18 a week. However, the claimant requested to return to work only one day, or five to six hours a week, but needed to check whether it would affect her unemployment benefits. She explained, "...Sorry to ask before making sure. But I would hate to lose my benefits package! It ended up being a

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<sup>1</sup> Whether the claimant is eligible for benefits from April 5 through May 2, is addressed in the Administrative Law Judge Decision for appeal 20A-UI-12966-SC-T.

lot[.]” (Exhibit 1) The employer granted her request. The claimant worked and earned wages from May 3 through June 20 and July 12 through July 25.

The claimant was off work from June 21 through the week ending July 11 because she tested positive for COVID-19. The claimant did not earn any wages for this time. The employer continued to have work available.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant was not able to and available for work from June 21 through July 11. Additionally, she was not totally, partially, or temporarily unemployed from May 3 through June 20 and July 12 through July 25. Regular unemployment insurance benefits are denied.

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.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

...

(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.

(1) An individual who is ill and presently not able to perform work due to illness.

...

(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.

...

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

...

(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.

...

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

Under Iowa Employment Security Law, an individual must be totally, partially, or temporarily unemployed to be eligible for benefits. Iowa Code § 96.19(38). Total unemployment occurs when someone has received no wages and performed no services during any given week. *Id.* Temporary unemployment occurs when an individual does not work during any given week, but it is because the employer did not have work available. *Id.* If an individual is totally unemployed, they have the burden to prove that they are able to work, available for work, and actively and earnestly seeking work. Iowa Admin. Code r. 871-24.22.

The claimant did not work the weeks of June 21 through July 11; however, that was due to her own personal illness. The employer still had work available to her, so she was not temporarily unemployed. The claimant was totally unemployed, but she cannot establish that she was able to and available for work, as she was ill. She is not eligible for regular unemployment insurance benefits those weeks.

The claimant worked and earned wages from May 3 through June 20 and July 12 through July 25; therefore, she was 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 work week. *Id.* If an individual is employed in a part-time position, working the same hours and wages as contemplated at hire or negotiated with the employer, they cannot be considered partially unemployed. Iowa Admin. Code r. 871-24.23(26).

In this case, the claimant requested to work only one or two days a week. The employer gave the claimant the requested hours even though it had other hours available. As the claimant was working in a part-time job in the same hours and wages negotiated with the employer, the claimant was also not partially unemployed and is not eligible for benefits. Benefits are denied effective May 3, 2020.

**DECISION:**

*Regular Unemployment Insurance Benefits Under State Law*

The October 7, 2020, reference 02, unemployment insurance decision is reversed. The claimant is not able to work and available for work effective May 3, 2020. Benefits are denied.

*Pandemic Unemployment Assistance (PUA) Under the Federal CARES Act*

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, she may be eligible for federally funded unemployment insurance benefits under the CARES Act. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that, in general, provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount in FPUC through July 25. This decision does not address whether the claimant is eligible for PUA. For a decision on such eligibility, the claimant must self-certify for PUA, as noted in the instructions provided in the "Note to Claimant" below.

**REMAND:**

The issues of whether the claimant has been overpaid state and federal unemployment benefits and whether she is subject to a penalty for not making herself available for work to collect unemployment insurance benefits is remanded to the Integrity Bureau.



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Stephanie R. Callahan  
Administrative Law Judge

December 29, 2020  
Decision Dated and Mailed

src/scn

*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.