

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TYANA L GARCIA
Claimant

THE UNIVERSITY OF IOWA
Employer

APPEAL 21A-UI-03167-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/04/20
Claimant: Appellant (4)

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.19(38)B – Total, Partial and Temporary Unemployment

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the January 8, 2021 (reference 02) unemployment insurance decision that found claimant was not eligible for unemployment benefits effective October 4, 2020 due to her still being employed at the same hours and same wages as her original contract of hire. The parties were properly notified of the hearing. A telephone hearing was held on March 17, 2021. The claimant participated personally. The employer, The University of Iowa, participated through witness Logan Stevens. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUES:

Is the claimant able to and available for work?
Is the claimant eligible for total, partial or temporary unemployment benefits?
Is the employer's account subject to charges?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for this employer on April 13, 2020 as a full-time nursing assistant. She filed an original claim for unemployment insurance benefits effective October 4, 2020 and filed continued weekly claims for benefits through December 26, 2020.

Claimant worked her regular full-time employment every week between October 4, 2020 and December 26, 2020 except the one-week furlough of December 20, 2020 through December 26, 2020. The employer furloughed her for one week due to budget constraints. Claimant was able to and available for work that week if work would have been available for her.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 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", subparagraph (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 § 96.19(38)b provides:

As used in this chapter, unless the context clearly requires otherwise:

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.

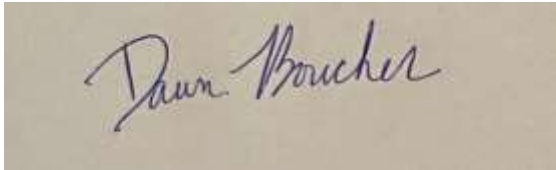
(emphasis added).

Claimant was temporarily laid off due to lack of work for the week-ending December 26, 2020 as she did not perform any services or earn any wages. See Iowa Code § 96.19(38). Benefits are allowed for the one-week of temporary unemployment of December 20, 2020 through December 26, 2020, provided the claimant is otherwise eligible. The employer's account may be charged for benefits paid during that one-week period. All other weeks between October 4, 2020 and December 19, 2020 that the claimant filed weekly-continued claims for benefits she is not eligible for benefits because she was working full-time and not able to and available for work pursuant to Iowa Code § 96.4(3).

DECISION:

The January 8, 2021 (reference 01) decision is modified in favor of the appellant. Claimant was temporarily laid off from December 20, 2020 through December 26, 2020. Benefits are allowed, provided the claimant is otherwise eligible, for that one-week period. All other weeks between

October 4, 2020 and December 19, 2020, the claimant was not able to and available for work and benefits are denied for those weeks.

A handwritten signature in dark ink on a light-colored background. The signature reads "Dawn Boucher" in a cursive, flowing script.

Dawn Boucher
Administrative Law Judge

March 19, 2021
Decision Dated and Mailed

db/ol