

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**LYNNE A PRITCHARD**  
Claimant

**APPEAL 20A-UI-07675-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AL'S CORNER OIL CO**  
Employer

**OC: 03/29/20**  
**Claimant: Appellant (5)**

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(10) – Able & Available – Leave of Absence  
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

**STATEMENT OF THE CASE:**

On July 11, 2020, Lynne A. Pritchard (claimant) filed an appeal from the July 7, 2020, reference 02, unemployment insurance decision that denied benefits effective March 29, 2020 based upon the determination she was not able to and available for work. After due notice was issued, a telephone hearing was held on August 12, 2020. The claimant participated. Al's Corner Oil, Co. (employer) participated through Cindy Tiefenthaler, Office Manager, and Tera Petersen, Operations Manager. The employer offered a document into the record; however, as they did not send the document to the claimant, it was not admitted. The parties received notice about a hearing to be held on the issue of able to and available for work, and, during the hearing, they waived notice on the issue of total, partial, and temporary unemployment.

**ISSUES:**

Is the claimant totally, partially, or temporarily unemployed?  
Was the claimant able to and available for work effective March 29, 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 October 8, 2019, as a part-time Cashier and Cook. The claimant's hours vary because she works when she chooses. She was not guaranteed a certain number of hours when she was hired.

On April 5, 2020, the claimant requested a leave of absence due to illness and a fear of getting COVID-19. The employer granted her request. The claimant returned to work on May 10.

The claimant filed her claim for benefits effective March 29. She reported wages earned for the week ending April 4 and each week from May 10 through July 25. She reported no wages earned for the five weeks between April 5 and May 9.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not totally, partially, or temporarily unemployed for the week ending April 4 and each week from May 10 through July 25. She was totally unemployed but not able to and available for work from April 5 through May 9. Regular unemployment insurance benefits are denied effective March 29, 2020.

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 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 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.

(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.

...

(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 unemployed, whether the unemployment is total, partial, or temporary, to be eligible for benefits. Iowa Code § 96.19(38). Total unemployment occurs when an individual has performed no services and received no wages during any given week. *Id.* Temporary unemployment occurs when a full-time employee is laid off due to a lack of work by the employer for fewer than four weeks and the employee will return to full-time work. *Id.* The claimant worked and reported wages for the week ending April 4 and each week between May 10 and July 25. Therefore, she cannot be totally or temporarily unemployed during those weeks.

The next issue is whether she was partially unemployed during that time. 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. *Id.* If an individual is employed in a part-time position working the same hours and wages as contemplated at hire, he or she cannot be considered partially unemployed. Iowa Admin. Code r. 871-24.23(26). The claimant was hired into a part-time position. She has worked part-time hours during her entire employment and her hours have fluctuated, as was the expectation when she was hired. She continues to work for the employer. As the claimant was working in a part-time job in the same hours and wages contemplated at hire during the week ending April 4 and each week between May 10 and July 25, the claimant is not partially unemployed. As the claimant was not totally, partially, or temporarily unemployed during that time, benefits are denied.

The claimant was totally unemployed between April 5 and May 9, as she did not work or earn any wages those weeks. As she was totally unemployed, she must be able to and available for work to be eligible for regular unemployment benefits. 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 was on an approved leave of absence and was not available for work. Accordingly, regular unemployment benefits for those five weeks are denied.

## **DECISION:**

### *Regular Unemployment Insurance Benefits Under State Law*

The July 7, 2020, reference 02, unemployment insurance decision is modified with no change in effect. The claimant was not unemployed during the week ending April 4 and the weeks between May 10 and July 25. She was not able to and available for work during the weeks between April 5 and May 9. Regular unemployment insurance benefits are denied effective March 29, 2020.

*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. This decision does not address whether the claimant is eligible for PUA. For a decision on such eligibility, the claimant must apply for PUA, as noted in the instructions provided in the “Note to Claimant” on the last page of the decision.



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Stephanie R. Callahan  
Administrative Law Judge

August 19, 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 or were unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply 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.