

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KATHALINE M CERVANTES
Claimant

APPEAL 20A-UI-05346-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PER MAR SECURITY & RESEARCH CORP
Employer

OC: 03/29/20
Claimant: Respondent (1)

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Availability Disqualifications
PL 116-136 Section 2104 (B) – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated May 28, 2020 (reference 01) that determined she was not working the same hours as in her original contract of hire and allowed benefits. The claimant did not respond to the hearing notice and did not participate in the hearing. Gretchen Goettig, Operations Manager, participated in the hearing on behalf of the employer on July 6, 2020.

ISSUES:

The issues are whether the claimant is eligible for total or partial unemployment benefits, still employed at the same hours and wages, whether the claimant is able and available for work and/or whether the employer's account is subject to charge, whether the claimant is overpaid benefits, and whether the claimant is eligible for Federal Pandemic Unemployment Compensation.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired as a full-time security officer for Per Mar Security & Research on July 31, 2018. Her hours were reduced from 40 per week to 30 per week March 15, 2020, because the museum to which she is assigned closed due to COVID-19. The claimant was then on FMLA due to knee surgery from May 11 through June 1, 2020. When she returned to work June 2, 2020, the museum was open and she was given 40 hours per week.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.19(38) 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.

In order to receive regular unemployment insurance benefits under Chapter 96 of the Iowa Code, a totally unemployed claimant must establish he or she is able to and available for work. Iowa Code § 96.4(3).

In this case, the claimant was partially unemployed from March 15 through May 10, 2020. So the issue is whether she is able to and available for work.

Iowa Admin. Code r. 871-24.23(10) provides:

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

- (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.

The employer did not have full-time work available for the claimant from March 15 through May 10, 2020 as the museum where she was assigned was not open. The claimant was able to and available for work. Therefore, the claimant is eligible for regular, partial, state-funded unemployment insurance benefits.

DECISION:

The May 28, 2020. (reference 01) unemployment insurance decision is affirmed. The claimant was partially unemployed and is able to work and available for work effective March 29 through the week ending May 9, 2020. Regular unemployment insurance benefits funded by the state of Iowa are allowed.



Julie Elder
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

July 20, 2020
Decision Dated and Mailed

je/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 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>.