

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**GABRIELLE A CLINTON**  
Claimant

**APPEAL NO. 20A-UI-06306-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**RIVERSIDE CASINO AND GOLF RESORT**  
Employer

**OC: 04/19/20**  
**Claimant: Appellant (4)**

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Iowa Code Section 96.4(3) – Able & Available  
Iowa Code Section 96.19(38) – Temporary and Partial Unemployment

**STATEMENT OF THE CASE:**

Gabrielle Clinton filed a timely appeal from the June 15, 2020, reference 01, decision that denied benefits effective April 19, 2020, based on the deputy's conclusion that Ms. Clinton was partially unemployed within the meaning of the law. After due notice was issued, a hearing was held on July 21, 2020. Ms. Clinton did not provide a telephone number for the hearing and did not participate. Anna Cavanaugh, Human Resources Business Partner, represented the employer. Exhibit A was received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX and WAGE-A.

**ISSUES:**

Whether the claimant was able to work and available for work for the period beginning April 19, 2020 through June 6, 2020.

Whether the claimant was partially and/or temporarily unemployed for the period beginning April 19, 2020 through June 6, 2020.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Gabrielle Clinton established an original claim for benefits that was effective April 19, 2020. Iowa Workforce Development set her weekly benefit amount at \$327.00. Ms. Clinton made weekly claims for the seven weeks between April 19, 2020 and June 6, 2020. For the weeks that ended April 25 and May 2, 2020, Ms. Clinton reported vacation pay that exceeded her weekly benefit amount. For the weeks that ended May 9, May 16, May 23, and May 30, 2020, Ms. Clinton reported zero wages. For the week that ended June 6, 2020, Ms. Clinton reported \$235.00 in wages. Ms. Clinton discontinued her claim after the benefit week that ended June 6, 2020.

Ms. Clinton is employed by Riverside Casino and Golf Resort as a cocktail server. Ms. Clinton usually works 30 hours per week. Her usual work hours are 8:00 a.m. to 4:00 p.m. on Thursday, Friday and Saturday and 10:00 a.m. to 6:00 p.m. on Sunday. The employer temporarily closed its doors effective March 16, 2020, in response to the COVID-19 pandemic.

The employer did not reopen until June 1, 2020. The employer did not have work for Ms. Clinton while the business was closed. The employer continued to pay Ms. Clinton her average weekly wages of \$461.00 for the period of March 16, 2020 through April 30, 2020. For the period of May 1, 2020 through May 29, 2020, Ms. Clinton continued off work without pay. During the week that ended May 30, 2020, the employer provided Ms. Clinton with three hours of work for which the employer paid Ms. Clinton \$27.30. During the week that ended June 6, 2020, Ms. Clinton returned to her regular work hours and worked her Thursday, Friday and Saturday shift, for which she was paid approximately \$346.00.

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

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) provides:

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.

(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(23) provides:

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

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

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.

Iowa Code section 96.3(7) provides that if a claimant receives benefits and is deemed ineligible for the benefits, Workforce Development must recover the benefits and the claimant must repay the benefits, even if the claimant was not at fault in receiving the benefits.

Ms. Clinton did not participate in the appeal hearing and did not present any evidence to meet her burden of proving that she was able to work and available for work during the period of April 19, 2020 through June 6, 2020.

Ms. Clinton cannot be considered temporarily or partially unemployed during the weeks that ended April 25 and May 2, 2020, when the employer paid her regular wages, which wages exceeded the weekly benefit amount. Ms. Clinton is not eligible for benefits for the weeks that ended April 25 and May 2, 2020.

During the weeks that ended May 9, 16 and 23, 2020, Ms. Clinton was temporarily unemployed. During those weeks, Ms. Clinton remained attached to the employment, but the employer had no work hours available and paid no wages. Ms. Clinton is eligible for benefits for the weeks that ended May 9, 16 and 23, 2020, provided she meets all other eligibility requirements.

During the week that ended May 30, 2020, Ms. Clinton was partially unemployed. During that week, the employer only had three hours of work available and the wages did not exceed the weekly benefit amount plus \$15.00. During the week that ended June 6, 2020, Ms. Clinton was back at work and earned wages that exceeded her weekly benefit amount by more than \$15.00.

Ms. Clinton was not partially unemployed during the week that ended June 6, 2020 and is not eligible for benefits for that week.

In response to the economic impact of COVID-19, Iowa Workforce Development published on its website Unemployment Insurance Guidance for Employers and Workers. As part of that publication, the Agency announced that claims filed as a direct or indirect result of Covid-19 would not be charged to employers. See <https://www.iowaworkforcedevelopment.gov/COVID-19#ife>, Information for Employers. Based on this Agency pronouncement, the employer's account will not be charged for benefits paid to Ms. Clinton for the period of April 19, 2020 through June 6, 2020.

**DECISION:**

The June 15, 2020, reference 01, decision is modified in favor of the claimant/appellant as follows. The evidence fails to establish that the claimant was available for work, or that the claimant was partially or temporarily unemployed, during the weeks that ended April 25, 2020 and May 2, 2020. The claimant is not eligible for benefits for those two weeks.

During the weeks that ended May 9, 16 and 23, 2020, the claimant was temporarily unemployed and eligible for benefits, provided she meets all other eligibility requirements.

During the week that ended May 30, 2020, Ms. Clinton was partially unemployed and was eligible for benefits, provided she meets all other eligibility requirements.

During the week that ended June 6, 2020, the claimant did not meet the availability requirement because she was back at work under her regular schedule. The claimant was not partially unemployed that week. The claimant is not eligible for benefits for the week that ended June 6, 2020.

The employer's account will not be charged for benefits paid to the claimant for the period of April 19, 2020 through June 6, 2020.



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James E. Timberland  
Administrative Law Judge

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August 21, 2020  
Decision Dated and Mailed

jet/sam