

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

RENEE M DUCKWORTH
Claimant

APPEAL NO. 20A-UI-01724-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

GRAPETREE MEDICAL STAFFING INC
Employer

OC: 01/19/20
Claimant: Respondent (2)

Iowa Admin. Code r. 871-24.23(26) – Part-Time Worker – Same Wages and Hours
Iowa Code § 96.4-3 – Able and Available
Iowa Code § 96.7(2)A(2) – Partial Benefits
Iowa Code § 96.19(38) – Total and Partial Unemployment

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated February 21, 2020, reference 02, which held claimant able and available for work. After due notice, a hearing was scheduled for and held on March 12, 2020. Claimant participated personally. Employer participated by Zach Myer. Claimant failed to respond to the hearing notice and did not participate. Employer's Exhibits 1-2 were admitted into evidence.

ISSUES:

Whether claimant is still employed at the same hours and wages?

Whether claimant is eligible to receive partial benefits?

Whether claimant is able and available for work?

FINDINGS OF FACT:

The claimant currently works for Grapetree Medical Staffing, a base period employer, part time under the same terms and conditions as contemplated in the original contract of hire. Claimant has been working for employer for nearly five years as a part time on-call LPN nurse. Claimant is listed as an active employee to this date although claimant has not taken any shifts since February 3, 2020.

Employer has an online listing of all available shifts in the area where claimant has worked. Procedurally, claimant and other employees log into their accounts and choose places where they wish to work and dates and shifts they'd like to work. Claimant has not chosen any shifts that she would like to work since February 3, 2020 although there were shifts in claimant's area working the requested hours on every day had she explored the options.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is partially unemployed and the employer is relieved of benefit charges.

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:

"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. 871-24.23(26) provides:

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

(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.

Because the claimant is currently employed part-time yet has chosen not to pick up the shifts that have been made available to her through the same procedure she'd used for years, claimant is not considered partially unemployed. Benefits are denied.

DECISION:

The February 21, 2020, reference 02, decision is reversed. The claimant has not made herself able and available for work since February 3, 2020. The claimant is not partially unemployed and benefits are denied as of that date. The account of the current part-time employer shall not be charged.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/scn