

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARY I HORN
Claimant

MERCY MEDICAL CENTER
Employer

APPEAL 20A-UI-11709-JC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/05/19
Claimant: Appellant (4R)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2)i(3) –On-Call Employment
Iowa Admin. Code r. 871-24.22(2)i(1) –On-Call Employment

STATEMENT OF THE CASE:

The claimant/appellant, Mary I. Horn, filed an appeal from the September 11, 2020 (reference 05) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on November 16, 2020. The claimant participated. The employer, Mercy Medical Center, registered a phone number for the hearing, but was unavailable when called.

The administrative law judge took official notice of the administrative records. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Does the claimant meet the definition of being considered partially unemployed?
Is the claimant able to work and available for work effective March 22, 2020?
If so, is the employer’s account liable for potential charges?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began employment with this employer approximately five years ago, as an on-call or as needed parish nurse, earning \$24.16 per hour. She did not have a set schedule or guarantee of hours each week and her schedule was based upon the needs of the employer. Claimant agreed to this arrangement upon hire. She last worked June 30, 2020 for the employer.

Claimant also is a contracted nurse for the Meskwaki Tribal Health Center in Tama, Iowa. She works approximately sixteen hours a week, earning \$55.00 per week. Because of the COVID-19 pandemic, her hours were reduced. This was the reason claimant filed her claim for unemployment insurance benefits with an effective date of March 22, 2020.

Claimant has other covered employment in her base period history (Biolife Plasma LLC). Her separation is non-disqualifying from Biolife Plasma LLC.

Claimant has been able and available for work each week she filed her claim for benefits and has reported gross weekly wages.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant's availability for work with this employer is moot.

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 96.1A, 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 Admin. Code r. 871-24.22(2)i(1) 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.

i. On-call workers.

(1) Substitute workers (i.e., post office clerks, railroad extra board workers), who hold themselves available for one employer and who do not accept other work, are not available for work within the meaning of the law and are not eligible for benefits.

Iowa Admin. Code r. 871-24.22(2)i(3) 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....

i. On-call workers.

(3) An individual whose wage credits earned in the base period of the claim consist exclusively of wage credits by performing on-call work, such as a banquet worker, railway worker, substitute school teacher or any other individual whose work is solely on-call work during the base period, is not considered an unemployed individual within the meaning of Iowa Code section 96.19(38)"a" and "b." An individual who is willing to accept only on-call work is not considered to be available for work.

Because claimant was hired to work only on-call or as-needed for Mercy Medical Center, she is not considered unemployed within the meaning of the law as it pertains to this employer. When an individual is hired to work on-call, the implied agreement is that they will only work when work is available and that work will not be regularly available. Thus any reduction in hours is directly related to the on-call status as no regular hours are guaranteed.

However, since the claimant has other base-period wages and that separation was not disqualifying, even though she is currently employed on-call, she is considered partially unemployed from the base period employer, and the lack of regular work with this on-call employer is moot, except as to reporting wages. Inasmuch as the current on-call employer is offering the same terms of employment as contemplated at hire, no benefit charges shall be made to its account. Claimant shall report gross wages earned each week in which a claim is filed.

DECISION:

The September 11, 2020, (reference 05) decision is modified in favor of the appellant. The claimant's on-call status renders availability for this employment moot as she has other qualifying wages in the base period. Benefits are allowed if claimant is otherwise monetarily eligible and the account of Mercy Medical Center shall not be charged.

REMAND: The issue of whether claimant is monetarily eligible based upon other base period wages is remanded to the Benefits Bureau for an initial investigation and decision.



Jennifer L. Beckman
Administrative Law Judge
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December 3, 2020
Decision Dated and Mailed

jlb/scn