

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**CHRISTINE D SEHLIN**  
Claimant

**HEARTLAND EMPLOYMENT SERVICES LL**  
Employer

**APPEAL 21A-UI-09075-AW-T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 05/31/20**  
**Claimant: Appellant (1)**

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Iowa Code § 96.1A(37) – Definitions – Total, partial unemployment  
Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search  
Iowa Code § 96.7(2)A(2) – Charges – Same base period employment  
Iowa Admin. Code r. 871-24.23(26) – Eligibility – A&A – Part-time same hours, wages

**STATEMENT OF THE CASE:**

Claimant filed an appeal from the March 23, 2021 (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on June 15, 2021, at 2:00 p.m. Claimant participated with her non-attorney representative, Scott Sehlin. Employer did not participate. Claimant's Exhibit A was admitted. Official notice was taken of the administrative record.

**ISSUES:**

Whether claimant is totally, partially or temporarily unemployed.  
Whether claimant is able to and available for work.  
Whether claimant is still employed at the same hours and wages.  
Whether employer's account is subject to charge.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant has been employed as a PRN Occupational Therapist with Heartland Employment Services for approximately ten years. Claimant works as-needed; employer does not guarantee claimant a minimum number of hours. After Covid-19 was declared a pandemic in March 2020, employer had no work available for claimant. In May 2020, employer informed claimant that her services would not be needed for a while. Claimant filed an initial claim for benefits effective May 31, 2020.

Claimant also worked as a part-time Adjunct Professor with St. Ambrose University during the base period. Claimant did not earn sufficient wages with St. Ambrose to meet the monetary eligibility requirements for regular unemployment insurance benefits.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes:

Iowa Code section 96.1A(37) 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 96.4(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 37, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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. 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.

Iowa Code section 96.7(2)a(2) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

(b) An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(c) The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

When claimant was hired by Heartland Employment Services, the parties contemplated the claimant would work as-needed. The implied agreement is that claimant will work when work is available and that work is not guaranteed to be available. Claimant's hours worked for employer pre-pandemic vary significantly from her hours worked during the pandemic; however, claimant continues to work as-needed, which is the same hours and wages agreed upon at the time of hire. Therefore, claimant is not considered unemployed and is not eligible for benefits based upon her employment with Heartland Employment Services. Benefits are denied.

Inasmuch as employer is offering the same wages and hours as contemplated at hire, no benefit charges shall be made to its account.

**DECISION:**

The March 23, 2021 (reference 02) unemployment insurance decision is affirmed. Claimant is still employed at the same hours and wages as agreed upon at the time of hire. Benefits are denied. Employer's account (# 627286-000) shall not be charged.



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June 30, 2021  
Decision Dated and Mailed

acw/scn