

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ANNETTE R HENNINGER**  
Claimant

**APPEAL 20R-UI-15075-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**NEXT GENERATION WIRELESS INC**  
Employer

**OC: 03/22/20**  
**Claimant: Respondent (2)**

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Iowa Code § 96.4(3) – Able to and Available for Work  
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment  
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Availability Disqualifications  
Iowa Code § 96.7(2)a(2) – Same Base Period Employment  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
PL116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation (FPUC)

**STATEMENT OF THE CASE:**

The employer/appellant, Next Generation Wireless Inc., filed an appeal from the August 17, 2020 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that allowed benefits. A first telephone hearing was scheduled for October 9, 2020. The employer failed to participate and the appeal was dismissed. See 20A-UI-10270-JC-T. Upon successful request appeal to the Employment Appeal Board, the matter was remanded for a new hearing.

The parties were properly notified about the second telephone hearing. A telephone hearing was held on January 21, 2021. The claimant did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing. The employer participated through Molly Burdess. 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:**

- Is the claimant totally, partially, or temporarily unemployed?
- Is the claimant able to and available for work?
- Is the claimant still employed at the same hours and wages?
- Is the employer’s account subject to charge?
- Is the claimant overpaid benefits?
- Is the claimant eligible for Federal Pandemic Unemployment Compensation?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant has worked for employer since 2018. Claimant established a claim for unemployment

insurance benefits with an effective date of March 22, 2020. At the time, claimant was a full-time retail wireless consultant, earning \$11.08 per hour plus commission. (She has since been promoted to assistant sales leader and earns \$12.08). Employer did not layoff claimant. Claimant's hours were temporarily reduced to 37 and 38.25 hours for a two-week period ending April 4, 2020. Claimant worked all available hours.

The administrative record reflects that claimant did not make any weekly continued claims after opening her claim for benefits. The claimant has not been paid any regular, state-funded unemployment insurance benefits or

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

For the reasons that follow, the administrative law judge concludes the claimant is not able to and available for work effective March 22, 2020.

Iowa Code § 96.19(38)b provides:

As used in this chapter, unless the context clearly requires otherwise:

38. "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 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. 871-24.23(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.

For an individual to be eligible to receive benefits, she must be able to work, available for work, and actively seeking work as required by the unemployment insurance law. Iowa Code § 96.4(3). The burden is on the claimant to establish that she is able and available for work within the meaning of the statute. Iowa Code § 96.6(2); Iowa Admin. Code r. 871-24.22.

Claimant in this case has worked 37-40 hours each week since establishing her claim for benefits with an effective date of March 22, 2020. Because she is working to an extent that she is removed from the labor market, she is not available for work, according to Iowa law. Therefore, the claimant is not eligible for regular, state-funded unemployment insurance benefits.

Because claimant did not make any weekly continued claims, the issues of overpayment, FPUC eligibility and employer's relief of charges are moot.

**DECISION:**

The unemployment insurance decision dated August 17, 2020, (reference 01) is affirmed. The claimant is not able and available for work effective March 22, 2020. Regular unemployment insurance benefits funded by the state of Iowa are denied until such time the claimant is able to and available for work. Because claimant did not make any weekly continued claims, the issues of overpayment, FPUC eligibility and employer's relief of charges are moot.

**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.

If you do not qualify for regular unemployment insurance benefits due to disqualifying separations and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). You will need to apply for PUA to determine your eligibility under the program. More information about how to apply for PUA is available online at:

[www.iowaworkforcedevelopment.gov/pua-information](http://www.iowaworkforcedevelopment.gov/pua-information)



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February 8, 2021  
Decision Dated and Mailed

jlb/mh