

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**KATHLEEN M WERNER**  
Claimant

**APPEAL 21A-UI-05429-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DUBUQUE HOLY FAMILY**  
Employer

**OC: 03/29/20**  
**Claimant: Appellant (4)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment  
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

**STATEMENT OF THE CASE:**

The claimant/appellant, Kathleen M. Werner, filed an appeal from the February 8, 2021 (reference 03) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on April 26, 2021. The claimant participated. Anita Valentine, testified at the request of claimant. The employer was represented by Paul Jahnke, hearing representative. Mary Sulentic, human resources, testified for the employer. The parties waived proper notice of the issues of whether claimant was able to and available for work, whether she was totally, partially or temporarily unemployed effective March 29, 2020 and whether this employer’s account is subject to charges.

The administrative law judge took official notice of the administrative records, including wage history. Claimant Exhibit A was admitted into evidence. 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 able to and available for work effective March 29, 2020?  
Is the claimant totally, partially, or temporarily unemployed?  
Is the claimant still employed at the same hours and wages?  
Is the employer’s account subject to charge?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant established her claim for unemployment insurance benefits with an effective date of March 29, 2020. Most recently, claimant has worked as a full-time early childcare associate, working year round, rather than only during the school calendar year.

On March 16, 2020, Governor Reynolds issued a proclamation closing K-12 school statewide due to the emerging COVID-19 pandemic. Claimant was temporarily unemployed due to the pandemic-related shutdown beginning March 26, 2020. Claimant was paid \$538.80 in gross wages for the week ending April 4, 2020, even though she did not perform work.

Claimant remained laid off due to a decrease in enrollment from April 1, 2020 through July 12, 2020. She returned to work on July 13, 2020. Claimant filed weekly claims through July 11, 2020.

Employer states it does not protest the receipt of benefits, but does not believe it should be charged. Employer stated based upon representation from IWD, that it believed its account would not be charged for claims that were due to COVID-19. Employer's testimony is consistent with information for employers on the IWD website, which states:

**ATTENTION EMPLOYERS:**

At this time, IWD is not charging employers for claims made by their employees due to COVID-19 related unemployment. Presently, there are also no plans to enact a trigger to begin charging employers in the event that the trust goes below a certain threshold. IWD will notify employers of any changes to this decision should the need arise.

See: <https://www.iowaworkforcedevelopment.gov/COVID-19#ife>

Claimant is listed as Group Code 8, which currently indicates that she is unemployed because of the pandemic. Under this group code, claimant is still attached to the employer but is not able to work due to the pandemic, and the employer is relieved of any charges.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge modifies the initial decision in favor of the claimant/appellant.

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 96.7(2)a(2)(a), (b), and (c) 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.

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 the week of March 29, 2020 through April 4, 2020:** Even though claimant did not perform work this week, she was paid as though she did. As such, she does not meet the eligibility requirements pursuant to Iowa Admin. Code r. 871-24.23(23). Benefits are denied for this week.

**For the period of April 5, 2020 through July 11, 2020:** Claimant was totally unemployed, due to a lack of work. She was otherwise able and available for work. Claimant is eligible for benefits, provided she meets all other requirements. As claimant is classified as Group Code 8, the employer shall not be charged for these benefits.

**DECISION:**

The unemployment insurance decision dated February 8, 2021, (reference 03) is modified in favor of the claimant/appellant.

*For the week of March 29, 2020 through April 4, 2020:* The claimant is not able and available for work effective March 29, 2020 through April 4, 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.

*For the period of April 5, 2020 through July 11, 2020:* Claimant was totally unemployed and able and available for work. Benefits are allowed, provided she is otherwise eligible. As claimant is classified as Group Code 8, the employer shall not be charged for these benefits.

**NOTE TO CLAIMANT:**

This decision determines you are not eligible for regular unemployment insurance benefits March 29, 2020 through April 4, 2020. 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)

If you have applied and have been approved for PUA benefits, this decision will not negatively affect your entitlement to PUA benefits.

You may find additional information about food, housing, and other resources at <https://covidrecoveryiowa.org/> or at <https://dhs.iowa.gov/node/3250>



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April 30, 2021  
Decision Dated and Mailed

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