

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**AMANDA C LORACK**  
Claimant

**THE UNIVERSITY OF IOWA**  
Employer

**APPEAL NO: 21A-UI-01440-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/16/20**  
**Claimant: Appellant (1)**

Iowa Code Section 96.4(3) – Able & Available  
Iowa Code Section 96.19(38) – Temporary and Partial Unemployment

**STATEMENT OF THE CASE:**

The claimant, Amanda Lorack, filed an appeal from the December 11, 2020, reference 01, decision that denied benefits for the period beginning August 16, 2020, based on the deputy's conclusion that the claimant was still employed under the same hours and wages as in her original contract of hire and could not be deemed partially unemployed within the meaning of the law. After due notice was issued, a hearing was held on February 18, 2021. The claimant participated. Jessica Wade represented the employer. Exhibit A was received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, WAGE-A and KLOG.

**ISSUES:**

Whether the claimant may be considered for benefits for the weeks that ended August 1, 8 and 15, 2020.

Whether the claimant was able to work and available for work for the period beginning August 16, 2020.

Whether the claimant was partially and/or temporarily unemployed for the period beginning August 16, 2020.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant is employed by The University of Iowa as a full-time Nurse Clinician in the Radiation Oncology Department at the University of Iowa Hospitals & Clinics. The claimant's usual work hours are 8:00 a.m. to 4:30 p.m., Monday through Friday. The claimant's wage during the relevant period was \$33.13 per hour. Due to current economic conditions, the employer has in place a mandatory furlough requirement under which the claimant was required to take the equivalent of two weeks off without pay during the fiscal year that started on July 1, 2020 and that will end on June 30, 2021. The furlough is to be scheduled consistent with the business needs of the employing department. During the week of July 26, 2020 through August 1, 2020, the claimant was off work without pay pursuant to the mandatory furlough. The claimant's last day worked before the furlough was Friday, July 24, 2020. The claimant returned to the full-time

employment on Monday, August 3, 2020 and continues in the full-time employment under the same hours and wages as existed before the furlough.

Though the claimant was off work during the week of July 26, 2020 through August 1, 2020, she did not take steps to establish an unemployment insurance claim during that week. Instead, the claimant waited until August 17, 2020 to apply for unemployment insurance benefits and at that time established an original claim for benefits that Iowa Workforce Development deemed effective August 16, 2020. IWD set the claimant's weekly benefit amount at \$531.00, but has paid no benefits in connection with the claim.

IWD records reflect that on August 26, 2020, the claimant made a weekly claim for the week that ended August 22, 2020. The claimant reported that she was back at work and that she earned \$1,400.00 in wages during that week.

On October 29, 2020, the claimant called IWD and spoke with a representative who manually entered claims for the weeks that ended August 1, 8 and 15, 2020. For the week that ended August 1, 2020, the claimant reported that she was not working, was able to work and available for work, but earned no wages and received no vacation pay or holiday pay. For the weeks that ended August 8 and 15, 2020, the claimant reported that she was back at work and earned \$1,100.00 in weekly wages.

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

The decision from which the claimant appealed addressed the claimant's benefit eligibility for the period beginning August 16, 2020, which was the effective date of the original claim for benefits. August 16, 2020 was the Sunday that started the week during which the claimant applied for benefits.

Iowa Administrative Code rule 871-24.2(1)(a) and (h) provide as follows:

Section 96.6 of the employment security law of Iowa states that claims for benefits shall be made in accordance with such rules as the department prescribes. The department of workforce development accordingly prescribes:

a. Following separation from work, any individual, in order to establish a benefit year during which the individual may receive benefits because of unemployment, shall file an initial claim for benefits electronically, in person at a local department office, or by other means prescribed by the department and register for work. A claim filed in accordance with this rule shall be deemed filed as of Sunday of the week in which the claim is filed.

h. Effective starting date for the benefit year.

(1) Filing for benefits shall be effective as of Sunday of the current calendar week in which, subsequent to the individual's separation from work, an individual files a claim for benefits.

(2) The claim may be backdated prior to the first day of the calendar week in which the claimant does report and file a claim for the following reasons:

1. The failure of the department to recognize the expiration of the claimant's previous benefit year;
2. The claimant filed an interstate claim against another state which has been determined as ineligible.

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 Admin. Code r. 871-24.22(2) 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. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

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.

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.

If a claimant 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. Iowa Code section 96.7(2)(a)(2)(a).

The claimant cannot be considered for benefits for the weeks that ended August 1, 8 and 15, 2020 because she had not established an underlying claim for benefits during any of those weeks.

During the week that ended August 22, 2020, the claimant was fully employed, was not temporarily or partially unemployed, and therefore did not meet the unemployment insurance "availability" requirement. The claimant is not eligible for benefits for that week.

**DECISION:**

The December 11, 2020, reference 01, decision is affirmed. The claimant is not eligible for benefits for the week that ended August 22, 2020, because the claimant was fully employed during that week, was not temporarily or partially unemployed, and did not meet the unemployment insurance "availability" requirement.

The claimant cannot be considered for benefits for the weeks that ended August 1, 8 and 15, 2020 because she had not yet established an underlying original claim for benefits during any of those weeks.



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James E. Timberland  
Administrative Law Judge

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March 1, 2021  
Decision Dated and Mailed

**NOTE TO CLAIMANT:**

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. 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 under state law 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.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>.