

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**HEIDE B RIENHARDT**  
Claimant

**CARROLL CO COUNCIL FOR THE PREVEN**  
Employer

**APPEAL 19A-UI-10112-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/17/19**  
**Claimant: Respondent (4-R)**

Iowa Code § 96.19(38) – Total, Partial, and Temporary Unemployment  
Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.23(26) – Availability Disqualifications Same Hours and Wages  
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

**STATEMENT OF THE CASE:**

On December 20, 2019, Carroll Co Council for the Preven, also known as Family Resources Center, (employer) filed an appeal from the December 12, 2019, reference 01, unemployment insurance decision that allowed benefits effective November 17, 2019 based upon the determination Heide B. Rienhardt (claimant) was partially unemployed and considered able to and available for work. After due notice was issued, a telephone conference hearing was held on January 16, 2020. The claimant did not respond to the hearing notice and did not participate. The employer participated through Tim Nichols, CEO, and Stacey Peter, Human Resources Director, and it was represented by Jacqueline Jones. The Employer's Exhibits 1 through 4 were admitted into the record. The administrative law judge took official notice of the claimant's claim and wage histories.

**ISSUES:**

Is the claimant partially unemployed effective November 17, 2019?  
Is the claimant able to and available for work effective November 17, 2019?  
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: The claimant was hired full-time as a Direct Care Professional on August 1, 2017 and her last day worked was August 8, 2019. The claimant was in a car accident and filed a claim for Workers' Compensation Benefits. On October 16, the employer received notice from its insurance company that the claimant had been released to return to work without restriction. On October 31, the employer ended the claimant's employment stating she abandoned her job when she did not return to work following release by her doctor. Whether the claimant's separation qualifies her for unemployment insurance benefits has not yet been investigated or adjudicated by the Benefits Bureau of Iowa Workforce Development (IWD).

The claimant filed for unemployment insurance benefits effective November 17, 2019 and reopened the claim effective December 1, 2019. The employer is the only employer in the claimant's base period. The claimant has filed weekly claims for benefits from December 1 through the week-ending January 11, 2020. The claimant has not reported earning any wages during those weeks. She has reported she is able to and available for work beginning with the week of December 15. In a decision issued December 26, IWD disqualified the claimant from receiving unemployment insurance benefits during the two-week period from December 1 through December 14 as she was not able to and available for work.<sup>1</sup> The employer had no other information to indicate the claimant is not able to and available for work.

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

For the reasons that follow, the administrative law judge concludes that the claimant is totally unemployed effective November 17, 2019 and is able to and available for work effective December 15, 2019. Benefits are allowed, provided she is otherwise eligible. The employer's account is subject to charge pending the outcome of the remanded issue.

Iowa Code section 96.19(38) provides:

Definitions.

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:

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<sup>1</sup> Unemployment Insurance Decision dated December 26, 2019, reference 02, which has not been appealed and has become final agency action.

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 provides, in relevant part:

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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

...

(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 provides, in relevant part:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

...

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

The first issue is whether the claimant is totally, partially, or temporarily unemployed. The employer's unrefuted evidence is that she is no longer in its employ as of October 31. The claimant has not reported any wages earned when filing her weekly claims beginning the week of December 1 and there is no indication she has accepted other employment. As a result, the claimant is totally unemployed and is required to be able to and available for work.

An individual claiming benefits has the burden of proof that she is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. The unrefuted evidence is the claimant was returned to work without restriction as of October 16. She did not file weekly claims for the weeks of November 17 through November 30. She was not available for work from December 1 through December 14. There is no other information to indicate the claimant is not able to and available for work. Accordingly, benefits are allowed effective December 15, provided the claimant is otherwise eligible. The employer's account remains subject to charge pending the outcome of the remanded issue.

Whether the claimant's separation from the employer qualifies her for unemployment insurance benefits is remanded for a fact-finding interview with notice sent to both parties and an unemployment insurance decision issued to both parties with appeal rights.

**DECISION:**

The December 12, 2019, reference 01, unemployment insurance decision is modified in the appellant's favor. The claimant is totally unemployed and able to work and available for work. Benefits are allowed effective December 15, 2019, provided she is otherwise eligible. The employer's account remains subject to charge pending the outcome of the remanded issue.

**REMAND:**

Whether the claimant's separation from the employer qualifies her for unemployment insurance benefits is remanded for a fact-finding interview with notice sent to both parties and an unemployment insurance decision issued to both parties with appeal rights.



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Stephanie R. Callahan  
Administrative Law Judge

January 17, 2020  
Decision Dated and Mailed