

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**LINDSAY WILSON**  
Claimant

**VIBRANT LLC**  
Employer

**APPEAL 20A-UI-09770-NM-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/22/20  
Claimant: Appellant (4R)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Availability Disqualifications  
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:**

On August 18, 2020, the claimant filed an appeal from the August 10, 2020, (reference 01) unemployment insurance decision that denied benefits based on a determination that she was still employed at the same hours and wages as contemplated at the time of hire. The parties were properly notified about the hearing. A telephone hearing was held on September 29, 2020. Claimant, Lindsay Wilson, participated and testified. Employer, Vibrant LLC, participated through CEO, Kit Baloun. Official notice was taken of claimant's WAGE A record.

**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?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant has worked for employer since April 12, 2019. Most recently, claimant works for employer as a part-time caregiver.

At the time of claimant's hire, she understood she would have up to 48.75 hours per month available to her. However, claimant is able to choose how many hours she works each month. There have been several periods of time, since the COVID 19 pandemic was declared a public health emergency in March 2020, where she has been unable to work for various reasons related to the pandemic.

Claimant further testified this is not her primary employer. A review of the administrative record shows the following:

<u>EMPLOYER</u>	<u>2018/4</u>	<u>2019/1</u>	<u>2019/2</u>	<u>2019/3</u>
KNOXVILLE COMMUNITY HOSPI VIBRANT, LLC	3640	3189	3812	3379 678

Claimant noted that she originally filed for unemployment insurance benefits when she was temporarily laid off work from her primary employer, Knoxville Community Hospital. Claimant could not remember the exact dates of her total unemployment, but testified it was during the time non-essential surgeries were prohibited by Executive Order of Governor Reynolds.

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

For the reasons that follow, the administrative law judge concludes that the claimant's availability for work with this employer is moot and she is considered partially unemployed. Benefits are allowed, provided she is otherwise eligible.

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)i provides, in relevant part:

Benefit 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. . .

i. On-call workers.

(1) Substitute workers (i.e., post office clerks, railroad extra board workers), who hold themselves available for one employer and who do not accept other work, are not available for work within the meaning of the law and are not eligible for benefits.

...

(3) An individual whose wage credits earned in the base period of the claim consist exclusively of wage credits by performing on-call work, such as a banquet worker, railway worker, substitute school teacher or any other individual whose work is solely on-call work during the base period, is not considered an unemployed individual within the meaning of Iowa Code section 96.19(38)"a" and "b." An individual who is willing to accept only on-call work is not considered to be available for work.

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 96.7(2)a(2)(a), (b), and (c) provides:

Employer contributions and reimbursements.

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 Admin. Code r. 871-23.43(4)a provides:

Charging of benefits to employer accounts.

(4) Supplemental employment.

a. An individual, who has been separated with cause attributable to the regular employer and who remains in the employ of the individual's part-time, base period employer, continues to be eligible for benefits as long as the individual is receiving the same employment from the part-time employer that the individual received during the base period. The part-time employer's account, *including the reimbursable employer's account*, may be relieved of benefit charges. On a *second benefit year claim* where the individual worked only for the part-time employer during the base period and the lag quarter, the part-time employer shall not be considered for relief of benefit charges with the onset of the second benefit year. It is the part-time employer's responsibility to notify the department of the part-time employment situation so the department may render a decision as to the availability of the individual and benefit charges. The individual is required to report gross wages earned in the part-time employment for each week claimed and the wages shall be deducted from any benefits paid in accordance with Iowa Code section 96.3(3).

(Emphasis added.)

Here, claimant has not worked for this employer since April 12, 2020 for various reasons related to COVID 19. The claimant was hired to work on-call or as-needed; therefore, she is not considered unemployed within the meaning of the law as it pertains to this employer. When an individual is hired to work on-call, the implied agreement is that they will only work when work is available and that work will not be regularly available. Thus, any reduction in hours is directly related to the on-call status, as no regular hours are guaranteed.

However, this is not claimant's regular employer. According to her testimony there have been several weeks where claimant was either totally or partially unemployed from her regular

employer. Since the claimant has other base-period wages, even though she is currently employed on-call, she is considered partially (or in some weeks totally) unemployed from the other base period employer, and the lack of regular work with this on-call employer is moot, except as to reporting wages. Partial benefits may be allowed in any week in which she works and earns wages less than her weekly benefit amount plus fifteen dollars, as may full benefits for any week in which she was totally unemployed and is otherwise eligible.

The current on-call employer is offering the same terms of employment as contemplated at hire; therefore, no benefit charges shall be made to its account. The claimant shall report gross wages earned each week in which a claim is filed, to the extent she has not done so already.

**DECISION:**

The August 10, 2020, reference 01, unemployment insurance decision is modified in favor of the appellant. The claimant's on-call status renders availability for this employment moot, as she has other qualifying wages in the base period. Benefits are allowed if the claimant is otherwise monetarily eligible and the account of Vibrant LLC (account number 595082) shall not be charged.

**REMAND:**

The issue of claimant's total and partial unemployment from her regular employer, Knoxville Community Hospital, is remanded to the Benefits Bureau of Iowa Workforce Development for initial investigation and determination.



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Nicole Merrill  
Administrative Law Judge  
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October 6, 2020  
Decision Dated and Mailed

nm/scn