

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

FARAH QAISI
Claimant

THE UNIVERSITY OF IOWA
Employer

APPEAL 21R-UI-11140-S2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/06/20
Claimant: Appellant (1)

Iowa Code § 96.19(38)a & b – Total and Partial 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:

The claimant Farah Qaisi filed an appeal from the November 24, 2020, (reference 01) unemployment insurance decision that denied benefits based on a finding that claimant was still employed for the same hours and wages. A telephone hearing was scheduled for February 6, 2021, pursuant to due notice. On February 22, 2021, the administrative law judge issued a decision dismissing the appeal because the claimant did not register for the hearing within fifteen minutes of the start time. Claimant appealed the decision to the Employer Appeal Board (EAB), who remanded the appeal for a new hearing. The parties were properly notified of the hearing. A telephone hearing was held on July 8, 2021. Claimant participated personally. Employer participated through human resources business analyst Jessica Wade. The administrative law judge took official notice of the administrative file.

ISSUES:

Is the claimant totally, partially, or temporarily unemployed?
Was the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant has been employed by employer since May 13, 2019. She was hired as a part-time phlebotomy technician and worked 20 hours per week. On March 23, 2020, claimant began working in an additional position with employer, as a temporary medical laboratory technician. She was not guaranteed a certain number of hours each week when she was hired in this position.

On August 2, 2020, claimant voluntarily resigned from the phlebotomy technician position and remained employed in the part-time lab technician position. Claimant was scheduled for fewer hours in the lab technician position around this same time due to a decreased workload. Claimant last worked for employer on November 18, 2020. Around this time, claimant delivered

a baby. Employer reached out to claimant several times to seek her return-to-work date, but claimant did not respond to employer's requests to return to work because she was home caring for her children and was unable to obtain childcare for her children.

Claimant filed her initial claim for benefits effective September 6, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code § 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 Code § 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.

Iowa Admin. Code r. 871-24.23 provides:

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

(8) Where availability for work is unduly limited because of not having made adequate arrangements for child care.

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

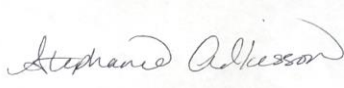
For an individual to be eligible to receive benefits, she must be able to work, available for work, and actively seeking work as required by the unemployment insurance law. Iowa Code § 96.4(3). The burden is on the claimant to establish that she is able and available for work within the meaning of the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

Claimant in this case was hired to only part-time hours and was not guaranteed shifts or hours, and therefore, the claimant is not considered to be unemployed within the meaning of the law. When an individual agrees to work part-time, the implied agreement is that full-time work or guaranteed shifts will not be regularly available. Thus since employer continued to provide part-time hours and claimant was employed under the same hours and wages as contemplated when she was hired, she is not considered partially unemployed effective September 9, 2020 through November 22, 2020.

The claimant was totally unemployed effective November 23, 2020, because she performed no work and earned no wages. However, she must be able to and available for work to be eligible for unemployment insurance benefits. After working on November 18, 2020, claimant stopped responding to employer's requests to return to work. She stopped working because she did not have childcare. Claimant's unemployment was because she was unavailable to perform available work due to a lack of childcare. As such, benefits are denied.

DECISION:

The November 24, 2020, (reference 01) unemployment insurance decision is affirmed. Claimant was still employed in her part-time job at the same hours and same wages as in her original contract of hire and was therefore not partially unemployed. Further, claimant was not able to and available for work due to a lack of childcare. Benefits are denied effective September 6, 2020.



Stephanie Adkisson
Administrative Law Judge
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July 20, 2021
Decision Dated and Mailed

sa/lj