

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANDREA TATE

Claimant

GRAPETREE MEDICAL STAFFING INC

Employer

APPEAL 21A-UI-11163-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/03/21

Claimant: Respondent (2)

Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search

STATEMENT OF THE CASE:

On April 12, 2021, Grapetree Medical Staffing Inc (employer/appellant) filed a timely appeal from the April 7, 2021 (reference 01) unemployment insurance decision that determined Andrea Tate (claimant/respondent) was eligible to receive unemployment insurance benefits effective January 3, 2021 based on a finding claimant was able and available for work.

A telephone hearing was held on June 28, 2021 at 8 a.m. The parties were properly notified of the hearing. Employer participated by HR Specialist Danielle Einck. Both numbers registered for claimant and her attorney were called at the time of hearing. There was no answer at either number and a voicemail message was left with directions to call the appeals bureau if they still wished to participate in the hearing. Claimant and her attorney did not call in to the appeals bureau until approximately 8:40 a.m., after the hearing had been held and the record was closed. As such, claimant did not participate in the hearing.

Employer's exhibit 1 admitted. Official notice was taken of the administrative record.

ISSUE(S):

- I. Is 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:

Claimant began working for employer on January 29, 2018. Claimant was hired as an on-call CNA. Claimant is still employed by employer in that capacity. Claimant most recently performed work for employer on June 16, 2021. In claimant's on-call position, employer makes no guarantee of availability of hours and claimant is not obligated to work a minimum number of hours. Claimant is free to accept or reject offered shifts. Shifts are offered and can be accepted through an online portal claimant has access to.

Claimant worked just one shift in the first quarter of 2021, in January. She did not pick up another shift until May 30, 2021. There were many shifts available during this period. Employer does not

know why claimant was not accepting shifts during this period. She did not request time off. Employer does not believe claimant was working elsewhere during this period.

Claimant filed a claim for benefits each week from the benefit week ending January 9, 2021 through the benefit week ending June 12, 2021. She did not report earning any wages during this period. The administrative record shows just \$184.00 in wages reported for claimant in the first quarter of 2021. Wage records for the second quarter of 2021 are not yet available. Claimant's wage credits in the base period – from the fourth quarter of 2019 through the third quarter of 2020 – consist entirely of wages earned with employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the April 7, 2021 (reference 01) unemployment insurance decision that determined Andrea Tate (claimant/respondent) was eligible to receive unemployment insurance benefits effective January 3, 2021 based on a finding claimant was able and available for work is REVERSED. Claimant is ineligible for benefits during the weeks filed.

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:

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.

i. On-call workers.

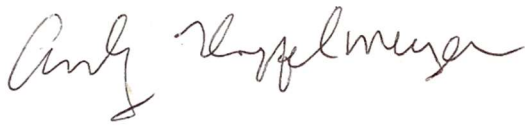
(1) Substitute workers (i.e., post office clerks, railroad extra board workers), who hold themselves available for one employer and who do not accept other work, are not available for work within the meaning of the law and are not eligible for benefits.

(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.

Claimant has not carried her burden of proving she was available for work during the weeks filed. The evidence instead shows claimant's wage credits in the base period consisted entirely of on-call work and that she was holding herself available for only on-call work. A claimant who only makes herself available for on-call work does not meet the availability requirements to be eligible for benefits. Benefits are therefore denied during the weeks filed.

DECISION:

The April 7, 2021 (reference 01) unemployment insurance decision that determined Andrea Tate (claimant/respondent) was eligible to receive unemployment insurance benefits effective January 3, 2021 based on a finding claimant was able and available for work is REVERSED. Claimant is ineligible for benefits during the weeks filed.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

July 9, 2021
Decision Dated and Mailed

abd/kmj

Note to Claimant:

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.