

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RHONDA M BLEADORN
Claimant

VALARIE J KELLER
Employer

APPEAL 20A-UI-09531-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions
Iowa Code § 96.19(38) – Total, Partial, and Temporary Unemployment
Iowa Code § 96.7(2)a(2) – Employer Chargeability

STATEMENT OF THE CASE:

On August 9, 2020, Rhonda M. Bleadorn (claimant) filed an appeal from the July 31, 2020, reference 01, unemployment insurance decision that denied benefits from March 29 through June 13, 2020, based upon the determination she was not able to and available for work. After due notice was issued, a telephone hearing was held on September 25, 2020. The claimant participated personally. Valarie J. Keller (employer) participated personally. No exhibits were offered into the record. The administrative law judge took official notice of the administrative record, specifically the claimant's claim and wages histories.

ISSUES:

Was the claimant partially unemployed from March 29 through June 13, 2020?
Was the claimant available for work from March 29 through June 13, 2020?
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: On November 7, 2011, the claimant began working for the employer, as a part-time Secretary. She was not guaranteed any set hours, but usually works between 20 and 24 hours a week. In mid-April 2020, the claimant's hours were reduced to between 15 and 17 a week. The claimant has worked and earned wages with this employer each week from March 29 through June 13.

The claimant filed her claim for benefits effective March 29, following a layoff from her other part-time employer Ann's Liquidation Service. The claimant typically works 11 hours a week with that employer, but does not have any guaranteed hours.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not unemployed as defined under Iowa law. The issues of availability for work and the chargeability of the employer's account are moot at this time. Benefits are denied.

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(26) provides:

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

(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.

Under Iowa Employment Security Law, an individual must be totally, partially, or temporarily unemployed to be eligible for benefits. Iowa Code § 96.19(38). Total and temporary unemployment occur when an individual has received no wages and performed no services during any given week. *Id.* In this case, the claimant has performed services and earned wages for each week she has claimed benefits. She is not totally or temporarily unemployed.

The next question is whether she is partially unemployed. In order to be partially unemployed, an individual must be laid off from full-time employment or working less than his or her regular work week. *Id.* If an individual is employed in a part-time position working the same hours and wages as contemplated at hire, he or she cannot be considered partially unemployed. Iowa Admin. Code r. 871-24.23(26). The claimant was hired for a part-time position and she was not guaranteed any hours. She continues to work for the employer. As the claimant is working in a part-time job in the same hours and wages contemplated at hire, she is not partially unemployed and is not eligible for benefits.

As the claimant is not partially unemployed nor has she had any weeks of total unemployment, the issues of her availability for work and the chargeability of the employer's account are moot at this time.

DECISION:

Regular Unemployment Insurance Benefits Under State Law

The July 31, 2020, reference 01, unemployment insurance decision is affirmed. The claimant is not unemployed under Iowa law and benefits are denied. The issues of availability for work and the chargeability of the employer's account are moot at this time.

Pandemic Unemployment Assistance (PUA) Under the Federal CARES Act

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, she may be eligible for federally funded unemployment insurance benefits under the CARES Act. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that, in general, provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount in FPUC. This decision does not address whether the claimant is eligible for PUA. For a decision on such eligibility, the claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" on the last page of the decision.



Stephanie R. Callahan
Administrative Law Judge

September 29, 2020
Decision Dated and Mailed

src/sam

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. 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. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently 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 under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.