

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JESSICA M BENNIE
Claimant

HEARTLAND EMPLOYMENT SERVICES
Employer

APPEAL 21A-UI-01113-AD-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/12/20
Claimant: Appellant (2)

Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search
Iowa Code § 96.19(38) – Total, partial unemployment

STATEMENT OF THE CASE:

On November 18, 2020, Jessica Bennie (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated November 10, 2020 (reference 01) that denied benefits as of July 12, 2020 based on a finding claimant was still employed for the same hours and wages as in the original contract of hire and therefore not partially unemployed.

A telephone hearing was held on February 15, 2021. The parties were properly notified of the hearing. Claimant participated personally. Heartland Employment Services LLC (employer/respondent) did not register a number for the hearing and so did not participate.

Claimant's Exhibits 1-7 were admitted. Official notice was taken of the administrative record.

ISSUE(S):

- I. Is the claimant totally, partially, or temporarily unemployed?
- II. Is the claimant able to and available for work?
- III. Is the claimant still employed at the same hours and wages? Is the employer's account subject to charge? Is the claimant an on-call worker?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant began working for employer on January 2, 2015. Claimant is still employed by employer. Claimant was hired to work full-time, 40 hours per week. Employer decreased claimant's hours several times throughout her employment.

Prior to filing for benefits effective July 12, 2020, claimant was working 32 hours per week. Employer reduced claimant's hours to just eight per week effective July 16, 2020. Claimant did

not request this change in hours and it was not disciplinary in nature. It was instead due to a drop in census due to the pandemic.

Claimant notified employer at the beginning of October 2020 that she was having difficulty completing her assigned work in just eight hours per week. Claimant was able and available for work and requested to return to 32 hours per week. Employer declined to increase claimant's hours to 32 per week but did agree to schedule claimant 16 hours per week.

Claimant filed a weekly claim for benefits each week from the benefit week ending July 18, 2020 and continuing through the benefit week ending February 6, 2021. Claimant accurately reported the wages she earned each week she filed. In the weeks she worked eight hours she reported \$209.00 in wages. In the weeks she worked 16 hours she reported \$418.00 in wages. Her weekly benefit amount is \$512.00. Claimant reported wages in excess of her weekly benefit amount plus \$15.00 in the weeks ending July 18 and December 12, 2020.

Claimant was out of town and therefore unavailable for work from July 19 through 25 and from September 6 through 19, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the decision dated November 10, 2020 (reference 01) that denied benefits as of July 12, 2020 based on a finding claimant was still employed for the same hours and wages as in the original contract of hire and therefore not partially unemployed is REVERSED.

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 Code section 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.

Claimant's hours were reduced from 32 hours per week to eight and later 16 hours per week. Claimant did not request this change in hours and it was not disciplinary in nature. It was instead due to a drop in census due to the pandemic. Claimant was able and available to work 32 hours per week. Claimant is partially unemployed in each week filed except for the weeks ending July 18 and December 12, 2020, as she reported wages in excess of her weekly benefit amount plus \$15.00 in those weeks. Claimant is also ineligible for benefits during the weeks ending July 25, September 12, and September 19, 2020 as she was out of town and therefore not available for work.

DECISION:

The decision dated November 10, 2020 (reference 01) that denied benefits as of July 12, 2020 based on a finding claimant was still employed for the same hours and wages as in the original contract of hire and therefore not partially unemployed is REVERSED. Claimant is eligible for benefits as set forth above.

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 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.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.



Andrew B. Duffelmeyer
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February 26, 2021
Decision Dated and Mailed

abd/scn