

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RACHEL C BRATHWAITE
Claimant

PDG ENTERPRISES LLC
Employer

APPEAL 21A-UI-16402-JC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/21/21
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Availability Disqualifications
Iowa Admin. Code r. 871-24.22(2)i(3) – Availability for Work – On-call Workers
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

The claimant/appellant, Rachel C. Brathwaite, filed an appeal from the July 15, 2021 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 16, 2021. The claimant participated personally and was represented by Kristy Marie Shipley, attorney at law. The employer participated through Peter Kessler. Kathy Kessler also participated.

The administrative law judge took official notice of the administrative records. Employer Exhibits 1-4 were admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the claimant an on-call worker?
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 established her claim for unemployment insurance benefits with an effective date of March 21, 2021. Employer operates the Goosetown Café. Claimant began employment as a server June 21, 2018. She permanently separated from employment effective June 4, 2021. The issue of claimant’s permanent separation/requalification has not yet been addressed by the Benefits Bureau.

Originally, she began employment on a full-time basis. In July 2020, claimant requested to move to a part-time basis. Claimant was not guaranteed a set number of hours or shifts each week when she moved to a part-time server. Claimant's hours would vary based upon her availability and the business needs of the employer.

Employer was closed March 21, 22 and 23, 2021 due to COVID-19. Claimant had requested time off prior to the closure for the week.

On April 5, 2021, claimant requested to be left off the employer's schedule for the week due to anticipated side effects from her upcoming COVID-19 vaccine (Employer Exhibit 4). As a result, she worked 0 hours for the week.

On April 11, 2021, claimant had a conversation with the employer and stated that due to her second job, she would like to move to an on-call basis/as needed. Employer agreed to claimant's request. As a result, employer did not schedule claimant for the weeks ending April 17 and 24, 2021. Employer presented evidence of offering additional shifts to claimant which she declined (Employer Exhibit 4).

Claimant made weekly continued claims each week between March 21, 2021 and May 1, 2021. Employer reported the following hours worked:

Week Ending	Hours Worked
3/27/21	6
4/3/21	4.17
4/10/21	0
4/17/21	0
4/24/21	0
5/1/21	6.52

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not eligible for benefits effective March 21, 2021.

Iowa Code § 96.19(38)b provides:

As used in this chapter, unless the context clearly requires otherwise:

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.

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.

For the weeks ending March 27, 2021 and April 3, 2021:
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.

Effective July 2020, claimant asked to work only part-time hours and was not guaranteed any set shift or hours. 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 guaranteed shifts or hours may vary or not be regularly available. Thus since the employer continued to provide regular part-time hours for this two week period, she is not considered partially unemployed. Benefits are denied.

For the week ending April 11, 2021:

Iowa Admin. Code r. 871-24.23 provides in pertinent parts:

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

(3) If an individual places restrictions on employability as to the wages and type of work that is acceptable and when considering the length of unemployment, such individual has no reasonable expectancy of securing work, such individual will be deemed not to have met the availability requirements of Iowa Code section 96.4(3).

...

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

Claimant in this case was not able and available for work April 5-11, 2021 when she asked to not be scheduled due to anticipated illness. Benefits are denied.

Effective April 11, 2021, claimant moved to an on call/as needed basis, at her request, to better accommodate her second job.

Iowa Admin. Code r. 871-24.22(2)i(3) provides:

Benefits 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.

(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 96.1A(37)"a" and "b." An individual who is willing to accept only on-call work is not considered to be available for work.

The legislature has provided a specific rule that applies to on-call workers holding that this category of worker, among others, are not considered to be unemployed within the meaning of the law when the only qualifying base period wage credits are related to "on-call" work. 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 diminution in hours is directly related to the sporadic availability of available work as no regular hours are guaranteed. Claimant has only on-call wages in her base period. Accordingly, the claimant is not considered an unemployed individual effective April 11, 2021, and unemployment insurance benefits funded by the State of Iowa are denied.

DECISION:

The unemployment insurance decision dated July 15, 2021 (reference 01) is affirmed. The claimant does not meet the eligibility requirements of being unemployed and able and available for work effective March 21, 2021. Regular unemployment insurance benefits funded by the state of Iowa are denied until such time the claimant is able to and available for work.



Jennifer L. Beckman
Administrative Law Judge

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Iowa Workforce Development
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Fax 515-478-3528

September 29, 2021
Decision Dated and Mailed

jlb/ol

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 unemployed or continue to be 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.

ATTENTION: On May 11, 2021, Governor Reynolds announced that Iowa will end its participation in federal pandemic-related unemployment benefit programs effective June 12, 2021. The last payable week for PUA in Iowa will be the week ending June 12, 2021. Additional information can be found in the press release at <https://www.iowaworkforcedevelopment.gov/iowa-end-participation-federal-unemployment-benefit-programs-citing-strong-labor-market-and>.

You may find information about food, housing, and other resources at <https://covidrecoveryiowa.org/> or at <https://dhs.iowa.gov/node/3250>

Iowa Finance Authority also has additional resources at <https://www.iowafinance.com/about/covid-19-ifa-recovery-assistance/>