

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**PATRICIA SCHMELZER**  
Claimant

**QUEST DIAGNOSTICS INC**  
Employer

**APPEAL NO. 21A-UI-14199-B2-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

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

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Iowa Admin. Code r. 871-24.23(26) – Part-Time Worker – Same Wages and Hours  
Iowa Code § 96.4-3 – Able and Available  
Iowa Code § 96.7(2)A(2) – Partial Benefits  
Iowa Code § 96.19(38) – Total and Partial Unemployment  
871 IA Admin. Code – 24.22(2)(l) – On Call Worker

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated June 11, 2021, reference 01, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on August 18, 2021. Claimant participated personally. Employer failed to respond to the hearing notice and did not participate.

**ISSUES:**

Whether claimant is still employed at the same hours and wages?

Whether claimant is eligible to receive partial benefits?

Whether claimant is able and available for work?

**FINDINGS OF FACT:**

The claimant currently works for Quest Diagnostics, a base period employer, part time under the same terms and conditions as contemplated in the original contract of hire. Claimant works as a mobile examiner for employer, going to life insurance applicants' homes and to health fairs to conduct examinations of prospective life insurance purchasers. Claimant stated that at no time has she been guaranteed any amount of hours, but instead would be given health fairs and clients' houses to attend to do her job when those situations arise. Claimant stated that she used to be the only person to do her job, and she had no problem reaching her 30 hours per week limit imposed by employer.

In early 2020 claimant had her doctor give a note to employer stating as a result of her age and other risk factors, it was not in her best interest to conduct in-home examinations during Covid. Claimant's lack of in home examinations continued until March of 2021 – the date when claimant was vaccinated from Covid. Claimant has continually tried to do both in home and

health fair examinations since her vaccination but stated that both the health fairs and opportunities to go to customers' houses has decreased greatly.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant is not partially unemployed from the time period of March 21, 2021 to the current date.

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.

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.

Because the claimant was never given any definite number of hours to be working and her work has always been dependent on the number of people needing examinations, claimant is not considered partially unemployed. Benefits are denied as of March 21, 2021.

**DECISION:**

The June 11, 2021, reference 01, decision is affirmed. The claimant is not partially unemployed and benefits are denied as of March 21, 2021.



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Blair A. Bennett  
Administrative Law Judge

August 23, 2021  
Decision Dated and Mailed

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*Note to Claimant:* Even though claimant is not eligible for regular unemployment insurance benefits under state law, she may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136. 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. **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>.