

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ALEXANDRIA SMITH
Claimant

CENTRAL IOWA HOSPITAL CORP
Employer

APPEAL NO. 20A-UI-08160-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Appellant (4/R)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.19(38) – Temporary & Partial Unemployment

STATEMENT OF THE CASE:

Alexandria Smith filed a timely appeal from the July 1, 2020, reference 01, decision that denied benefits effective March 29, 2020, based on the deputy's conclusion that Ms. Smith was not partially unemployed within the meaning of the law. After due notice was issued, a hearing was held on August 24, 2020. Ms. Smith participated. Barbara Owca represented the employer. The Administrative Law Judge took official notice the following Agency administrative records: KCCO, DBRO and WAGE-A.

ISSUES:

Whether the claimant was able to work and available for work within the meaning of the law during the period of March 29, 2020 through May 9, 2020.
Whether the claimant was partially unemployed during the period of March 29, 2020 through May 9, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Alexandria Smith is employed by Central Iowa Hospital Corporation, doing business as Lutheran Hospital, as a part-time patient care technician. Since July 31, 2019, Ms. Smith has worked the "weekend package," 7:00 p.m. to 7:00 a.m., Friday and Saturday, three out of four weeks. Her hourly wage is \$15.06. The employment provides weekly wages of roughly \$350.00. In October 2019, Ms. Smith took an extended leave of absence from the Lutheran Hospital employment in connection with a pregnancy that required bed rest. At the time Ms. Smith went off work, she expected to deliver twins in March 2020. Ms. Smith gave birth in February 2020. On March 30, 2020, Ms. Smith returned to the Lutheran Hospital employment upon the expiration of her approved leave of absence and after being released by her doctor to return to work without restrictions. Since March 30, 2020, Ms. Smith has continued in the Lutheran Hospital employment under the same work hours and wages as existed during the base period.

During the period of part-time employment with Lutheran Hospital, Ms. Smith has also had full-time employment with Jordan Creek Pediatrics. Ms. Smith took an extended leave of absence

from the Jordan Creek employment in September 2019 in connection with her pregnancy. By the time Ms. Smith was released by her doctor to return to work in March 2020, Jordan Creek Pediatrics had shut its doors to the public in response to the COVID-19 pandemic and the Governor's Proclamation of Public Health Disaster Emergency. Ms. Smith notified the full-time employer that she was ready to return once the clinic reopened. Jordan Creek Pediatrics reopened effective May 11, 2020. Ms. Smith elected not to return to the full-time employer.

Ms. Smith filed an original claim for benefits that was effective March 29, 2020. Iowa Workforce Development set her weekly benefit amount for regular benefits at \$481.00. Ms. Smith made weekly claims for the six consecutive weeks between March 29, 2020 and May 9, 2020. Ms. Smith inaccurately reported her wages for multiple weeks, but her earned wages were consistently less than her weekly benefit amount plus \$15.00. For the week that ended April 4, she reported \$18.00 in wages was paid \$481.00 in regular benefits. Ms. Smith concedes the wage report was inaccurate. For the week that ended April 11, 2020, she reported \$800.00 in vacation pay and received zero unemployment insurance benefits. However, Ms. Smith did not receive vacation pay for that week. For the week that ended April 18, she reported \$700.00 in wages and received zero unemployment insurance benefits. Ms. Smith did not have \$700.00 in wages for that week and erroneously reports two weeks' worth of wages for the one week. For the week that ended April 25, she reported zero wages and received \$481.00 in regular benefits. However, during that week, Ms. Smith had remained off work to care of her son who was ill with bronchitis. For the week that ended May 2, 2020, she reported \$350.00 vacation pay and received \$131.00 in regular benefits. Ms. Smith did not receive vacation pay for that week and had erroneously reported her regular wages as vacation. For the week that ended May 9, 2020, she reported \$350.00 in wages and received \$251.00 in regular benefits. Iowa Workforce Development also paid \$600.00 in Federal Pandemic Unemployment Compensation benefits for each of the weeks for which regular benefits were paid.

Ms. Smith discontinued her claim for benefits following the benefit week that ended May 9, 2020 and following her decision not to return to the full-time employment at Jordan Creek Pediatrics.

REASONING AND CONCLUSIONS OF LAW:

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) 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. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

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) and (29) 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.

...

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

The weight of the evidence in the record establishes that Ms. Smith was able to work and available work during the period of March 29, 2020 through May 9, 2020, with the exception of the week that ended April 25, 2020, when she off work caring for a sick child. Ms. Smith is not eligible for benefits for the week that ended April 25, 2020. Ms. Smith was not temporarily or partially unemployed from this part-time employer at any point between March 29, 2020 through May 9, 2020. This employer continued to have the same work available for Ms. Smith. This employer will not be charged for benefits paid to Ms. Smith for the period of March 29, 2020 through May 9, 2020. The fact that Ms. Smith was not temporarily or partially unemployed from this part-time employment does not alter the fact that she was temporarily unemployed from her other, full-time employment during the period of March 29, 2020 through May 9, 2020. With the exception of the week that ended April 25, 2020, Ms. Smith is eligible for benefits for the period of March 29, 2020 through May 9, 2020, provided she meets all other eligibility requirements.

This matter will be remanded to the Benefits Bureau for a determination of Ms. Smith's actual and accurate earned wages for the weeks between March 29, 2020 and May 9, 2020. This matter is also remanded for entry of overpayment decisions regarding the benefits paid for the week that ended April 25, 2020 and for determination of whether there is a further overpayment of benefits based on the inaccurate weekly wage reports.

DECISION:

The July 1, 2020, reference 01, is modified in favor of the claimant as follows. The claimant was able to work and available for work during the weeks between March 29, 2020 through April 18, 2020 and during the weeks between April 26, 2020 and May 9, 2020. The claimant is eligible for benefits for those weeks, provided she meets all other eligibility requirements. The claimant was not available for work during the week that ended April 25, 2020 and is not eligible for benefits for that week. The employer's account will not be charged for benefits paid to the claimant for the period of March 29, 2020 through May 9, 2020.

This matter is remanded to the Benefits Bureau for a determination of the claimant's actual and accurate earned wages for the weeks between March 29, 2020 and May 9, 2020. This matter is also remanded for entry of overpayment decisions regarding the benefits paid for the week that ended April 25, 2020 and for determination of whether there is a further overpayment of benefits based on the inaccurate weekly wage reports.



James E. Timberland
Administrative Law Judge

August 27, 2020
Decision Dated and Mailed

jet/scn