

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**ALANA R ERHART**  
Claimant

**THE UNIVERSITY OF IOWA**  
Employer

**APPEAL NO. 21A-UI-13823-JT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

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

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Iowa Code Section 96.4(3) – Able & Available  
Iowa Code section 96.1A(37) – Temporary & Partial Unemployment

**STATEMENT OF THE CASE:**

The claimant, Alayna Erhart, filed a timely appeal from the June 1, 2021, reference 01, decision that denied benefits effective March 21, 2021, based on the deputy's conclusion that the claimant was not partially unemployed within the meaning of the law. After due notice was issued, a hearing was held on August 12, 2021. Claimant participated. Scott Coons represented the employer. There were three appeal numbers set for a consolidated hearing: 21A-UI-13822-JTT, 21A-UI-13823-JTT and 21A-UI-13824-JTT. Exhibits A and B were received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, DBIN and WAGE-A. The administrative law judge took official notice of Red Lobster's SIDES response to the notice of claim issued to that employer.

**ISSUES:**

Whether the claimant was able to work and available for work for the period beginning March 21, 2021.

Whether the claimant was partially and/or temporarily unemployed for the period beginning March 21, 2021.

Whether the employer's account may be charged for benefits for the period beginning March 21, 2021.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant established a new original claim and a second benefit year that was effective March 21, 2021. There was no claim for benefits in effect during the week that ended March 20, 2021. In connection with the new benefit year, Iowa Workforce Development set the weekly benefit amount for regular benefits at \$319.00. In connection with the new benefit year, the claimant made weekly claims for the five weeks between March 21, 2021 and April 24, 2021. The claimant remained able to work at all relevant times. For each of the weekly claims for the period of March 21, 2021 through April 24, 2021, the claimant reported \$303.00 in wages.

The claimant is employed by the University of Iowa (UI) as a part-time nursing assistant. The claimant began the UI employment in 2018. Since May 2019, the claimant has had a half-time, 20-hours per week, appointment and a set schedule wherein the claimant works on 7:00 a.m. to 3:00 p.m. on Thursdays and from 7:00 a.m. to 7:00 p.m. on Saturday and Sunday of alternating weeks. Since the benefit year that began March 21, 2021, the UI has had the usual 20 hours of work available to the claimant. The claimant's wage for the UI work is \$15.15 an hour. The UI has not decreased the claimant's wage.

The claimant has two base period employers: The University of Iowa and Red Lobster Restaurants, L.L.C. The Red Lobster employment pre-dates the UI employment. The claimant last performed work for Red Lobster on March 13, 2020. Effective March 17, 2020, the claimant was laid off from part-time employment with Red Lobster. Red Lobster responded to the notice of claim issued to that employer via SIDES. Red Lobster reported that the claimant was off work pursuant to a COVID-19 pandemic based disaster related separation.

Red Lobster did not recall the claimant to the employment for more than a year after the layoff. On April 15, 2021, Red Lobster notified the claimant that Red Lobster was recalling the claimant to that employment. The claimant returned to the Red Lobster employment on April 28, 2021. The claimant did not look for other employment to replace the Red Lobster employment. Rather, the claimant continued in the part-time UI employment and waited to be recalled to Red Lobster.

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

The present matter concerns the claimant's eligibility for benefits during the period of March 21, 2021 through the April 24, 2021.

The administrative law judge notes there was no benefit year in effect during the week that ended March 20, 2021.

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 Admin. Code r. 871-24.23(20) and (26) provides:

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

(20) Where availability for work is unduly limited because the claimant is waiting to be recalled to work by a former employer or waiting to go to work for a specific employer and will not consider suitable work with other employers.

...

(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.

Iowa Code section 96.1A(37) 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.

If a claimant to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. Iowa Code section 96.7(2)(a)(2)(a).

Throughout the period of March 21, 2021 through April 24, 2021, the University of Iowa had the same work available for the claimant as existed in the base period. Accordingly, the claimant was not temporarily laid off or partially unemployed from the University of Iowa during that period. The University of Iowa's account will not be charged for benefits for that period.

The fact that the claimant continued in the part-time employment with the University of Iowa throughout the claim period would not prevent her from being eligible for unemployment insurance benefits based on the March 17, 2020 layoff from Red Lobster, provided she met all other eligibility requirements. Those other requirements would include the requirement that she remain able to work and available for work.

The claimant's decision to forgo a work search to replace the Red Lobster employment several months after the March 17, 2020 layoff prevents her from meeting the availability requirement during the period of March 21, 2021 through April 24, 2021. Based on the undue restriction of availability, benefits are denied for the period of March 21, 2021 through April 24, 2021.

**DECISION:**

The June 1, 2021, reference 01, decision is affirmed. The claimant was not temporarily laid off or partially unemployed from the University of Iowa employment during the period of March 21, 2021 through April 24, 2021. The University of Iowa's account shall not be charged for benefits for that period. The claimant did not meet the availability requirement during the period of March 21, 2021 through April 24, 2021 and is not eligible for benefits for that period.



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James E. Timberland  
Administrative Law Judge

September 20, 2021  
Decision Dated and Mailed

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