

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JENNIFER KRUIDENIER
Claimant

THE IOWA CLINIC PC
Employer

APPEAL 20A-UI-04719-S1-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

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

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.4(3) – Able and Available
871 IAC 24.23(26) – Same Hours and Wages
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
871 IAC 24.22(2)f – Eligibility Conditions

STATEMENT OF THE CASE:

Jennifer Kruidenier (claimant) appealed a representative's May 22, 2020, decision (reference 01) that denied unemployment insurance benefits due to being unavailable for work with The Iowa Clinic (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 16, 2020. The claimant was represented by Kyle Kruidenier, Attorney at Law, and participated personally. The employer participated by Julie Clark, Senior Human Resources Consultant.

The claimant offered and Exhibit A was received into evidence. The administrative law judge took official notice of the administrative file.

ISSUE:

The issue is whether the claimant is eligible for total or partial unemployment benefits, still employed at the same hours and wages, whether the claimant is able and available for work and/or whether the employer's account is subject to charge.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on May 25, 2012, as a part-time registered nurse. On July 3, 2018, the claimant changed her status to pro re nata (PRN) or as needed. The employer generally did not guarantee hours for PRN or part-time workers. In the claimant's case, it scheduled her regular hours. She worked Mondays, Thursdays, and Fridays from 8:00 a.m. to 5:00 p.m. Starting at the end of January 2020, the employer occasionally added Tuesdays from 12:00 p.m. to 5:00 p.m. to her hours.

On March 25, 2020, the office manager called the claimant and said she was furloughed until further notice. The employer did not offer the claimant any hours until April 28, 2020. The

claimant was available to work during that period. The employer returned her to work with reduced hours as of April 28, 2020.

The claimant filed for unemployment insurance benefits with an effective date of March 29, 2020. Her weekly benefit amount was determined to be \$350.00. She filed a weekly claim for benefits for the seven-week period ending May 16, 2020. She reported no wages for the four-week period ending April 25, 2020. For the week ending May 2, 2020, the claimant reported gross wages of \$191.00. For the week ending May 9, 2020, the claimant reported gross wages of \$191.00. For the week ending May 16, 2020, the claimant reported gross wages of \$340.00. The claimant has not received any state unemployment insurance benefits or Federal Pandemic Unemployment Compensation.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether the claimant is totally, partially, or temporarily unemployed and whether the part-time employer is relieved of benefit charges.

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 Code section 96.7(2)a(2)(a), (b), and (c) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the individual 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. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

(b) An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(c) The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

During the four-week period ending April 25, 2020, the employer did not pay the claimant any wages and the claimant did not perform any services. A worker is considered to be totally employed when she performs no work and receives no wages from the employer. The claimant is considered to be totally unemployed for the four-week period ending April 25, 2020. Benefits are allowed for this period, provided the claimant is otherwise eligible.

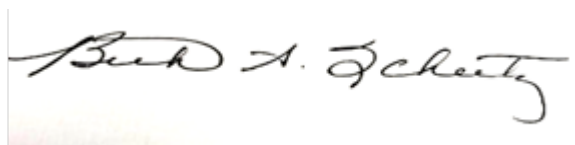
The next issue is whether the claimant was partially unemployed for the three-week period ending May 16, 2020. During the three-week period ending May 16, 2020, the employer paid the claimant wages and the claimant did perform services. The claimant argues that she is partially unemployed for those three weeks. To be partially unemployed, the worker has to be either a full-time employee working fewer hours or separated from employment and earning a certain amount of wages from another employer.

The claimant cannot be considered to be partially unemployed within the meaning of the law because the claimant was hired to work only part-time hours, was not guaranteed full-time hours, and the wage history consists of only part-time wages. She was not separated from employment. Benefits are denied effective April 26, 2020.

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). The claimant is able and available for all hours the employer has offered. She is considered to be unavailable for work.

DECISION:

The representative's May 22, 2020, decision (reference 01) is modified in favor of the appellant. The claimant is considered to be totally unemployed for the four-week period ending April 25, 2020. Benefits are allowed for this period, provided the claimant is otherwise eligible. The claimant is disqualified from receiving unemployment insurance benefits as of April 26, 2020.



Beth A. Scheetz
Administrative Law Judge

June 29, 2020
Decision Dated and Mailed

bas/scn