

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**MORGAN A WHALEN**  
Claimant

**APPEAL 22A-UI-05701-SN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PLAIN VIEW PROPERTIES LLC**  
Employer

**OC: 03/29/20**  
**Claimant: Appellant (1)**

Iowa Code § 96.6(2) – Timeliness of Appeals  
Iowa Code section 96.1A(37) – Total and Partial Unemployment  
Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.23(26) – Availability Disqualifications Same Hours and Wages  
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

**STATEMENT OF THE CASE:**

Morgan A. Whalen (claimant) filed an appeal from the November 10, 2020, reference 01, unemployment insurance decision that disqualified her from benefits effective May 31, 2020, as she was employed in the same hours and wages as before she began her employment.

The parties were properly notified about the new hearing. A telephone hearing was held on April 14, 2022. The hearing was held jointly with appeal 22A-UI-05702-SN-T, 22A-UI-05708-SN-T, 22A-UI-05711-SN-T, and 22A-UI-05699-SN-T. The claimant participated. The employer participated through Owner Jennifer Koberg. Exhibits D-1 and D-2 were received into the record. Official notice was taken of the agency records.

**ISSUES:**

Whether the claimant's appeal is timely? Whether there are reasonable grounds to find her appeal otherwise timely?

Is the claimant partially unemployed effective May 31, 2020?

Is the claimant available for work effective May 31, 2020?

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:

The claimant was hired to work as a bartender / cook beginning in June 2014. The claimant's hourly rate of pay was \$6.50. For the majority of that time, the claimant has been assigned an average of 25 hours per week that varied due to customer demands and whether she was performing cook or bartender duties. The following table shows the wages she received from

the employer in her base period. This is a term used for the four quarters she would draw from for regular unemployment on this claim.

	2018/4	2019/1	2019/2	2019/3
Plain View Properties LLC	3899	3542	2654	4342

On March 17, 2022, Governor Kim Reynolds issued a Covid19 Proclamation closing public dining and other establishments. The employer and many other dining areas continued to operate, but by carry out only. The consequences of the Covid19 Proclamation and the pandemic in general reduced customer demand and the claimant's schedule.

	2020/2	2020/3	2020/4	2021/1
Plain View Properties LLC	1917	3000	3220	3429

The claimant's schedule was also reduced by her availability for two of the weeks she made weekly claims.

The claimant earned \$0.00 for the week ending June 6, 2020. The claimant requested to be off that week because she was getting ready for her marriage.

The claimant earned \$0.00 for the week ending September 5, 2020. The claimant requested to be off from work for the week ending September 5, 2020.

The following section describes the findings of fact necessary to resolve the timeliness issue:

A disqualification decision was mailed to the claimant's address of record, 107 3rd Avenue East in Donahue, Iowa on November 10, 2020 (reference 05). The claimant updated her address to this location on May 13, 2020, ten days after she moved to this address. The claimant did not receive the decision. The claimant received a series of balance statements, labeled internally as Overpayment Statement of Amount Due 65-5314A (05-17), in November and December 2021 stating that she owed money to the agency. These balance statements do not inform parties how to appeal. The claimant did not receive overpayment decision letters dated September 21, 2021 (reference 02, 03, and 04) displaying the rationale for these decisions. The Appeals Bureau could not find Iowa Workforce Development's versions of reference 03 and 04 due to a technological error. The claimant did not receive a decision, dated February 10, 2022, (reference 05), offsetting her existing overpayments with her State of Iowa tax refund.

On March 3, 2022, an Iowa Workforce Development Department representative called the claimant and informed her that she owed money to the State of Iowa. The claimant told the representative that she did not understand because her hours were reduced due to Covid19. The representative informed the claimant that she had been disqualified from regular unemployment. After receiving this news and information regarding how to appeal, the claimant immediately appealed.

## REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the claimant's appeal is timely. The administrative law judge determines it is.

Iowa Code section 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of issuance of the notice of the filing of the claim to protest payment of benefits to the claimant. All interested parties shall select a format as specified by the department to receive such notifications. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was issued, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant did not have an opportunity to appeal the fact-finder's decision because she did not receive decisions from the agency informing her of the decision disqualifying her, establishing overpayments, and informing her of that her refund would offset those overpayments. The claimant received a series of balance statements, labeled internally as Overpayment Statement of Amount Due 65-5314A (05-17), in November and December 2021 stating that she owed money to the agency. These balance statements do not inform parties how to appeal. Without instructions of a means of appeal, no meaningful opportunity for appeal exists, especially for someone who is not familiar with the system and in the context of Covid19 unemployment programs. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant appealed on March 3, 2022, the day she was first given the means to appeal and being informed of the decisions made by Iowa Workforce Development.

For the reasons that follow, the administrative law judge concludes the claimant is not partially or totally unemployed. The issues availability for work and the chargeability of the employer's account are moot at this time. Benefits are denied.

Iowa Code section 96.4(3)a provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. a. 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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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 96.1A(37) provides:

Totally unemployed", "partially unemployed", and "temporarily unemployed.

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.

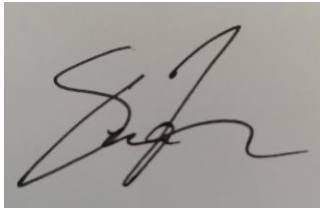
Under Iowa Employment Security Law, an individual must be totally or partially unemployed to be eligible for benefits. Iowa Code § 96.19(38). Total unemployment is when someone has received no wages and performed no services during any given week. *Id.* In this case, the claimant has performed services and earned wages for each week she has claimed benefits. She is not totally unemployed.

The next question is whether she is partially unemployed. In order to be partially unemployed, an individual must be laid off from full-time employment or working less than his or her regular full-time work week. *Id.* If an individual is employed in a part-time position working the same hours and wages as contemplated at hire, he or she cannot be considered partially unemployed. Iowa Admin. Code r. 871-24.23(26). The claimant was hired into and requested a part-time position. She has worked part-time hours during her entire employment. Her hours have fluctuated as was the expectation when she was hired. She continues to work for the employer. As the claimant is working in a part-time job in the same hours and wages contemplated at hire, or agreed to shortly thereafter, the claimant is not partially unemployed and is not eligible for benefits.

As the claimant is not partially unemployed nor has she had any weeks of total unemployment, the issues of her availability for work and the chargeability of the employer's account are moot at this time.

**DECISION:**

The November 10, 2020, reference 01, unemployment insurance decision is affirmed. The claimant is not partially unemployed and benefits are denied. The issues of availability for work and the chargeability of the employer's account are moot at this time.

A handwritten signature in black ink, appearing to read 'S. Nelson', is shown within a rectangular box.

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Sean M. Nelson  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515) 725-9067

April 29, 2022  
Decision Dated and Mailed

smn/mh

**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 and were unemployed between February 2, 2020, and June 12, 2021 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.** To apply for PUA go to <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-appeals> and click the link in the last paragraph under “WHAT TO EXPECT FROM THE HEARING.” **The authorization number is 105701, the pin number you used for the hearing.**

If this decision becomes final and you are not eligible for PUA, you may have an overpayment of benefits.