

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MAKENZIE R NABER
Claimant

UNLIMITED SERVICES INC
Employer

APPEAL 20A-UI-13139-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/12/20
Claimant: Appellant (4)

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Admin. Code r. 871-24.23(26) – Available – Part-time Same Wages and Hours
Iowa Code § 96.19(38) – Total, Partial, and Temporary Unemployment
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

On October 23, 2020, Makenzie R. Naber (claimant) filed an appeal from the October 19, 2020, reference 02, unemployment insurance decision that denied benefits based upon the determination she voluntarily quit employment with Unlimited Services, Inc. (employer) for personal reasons. The parties were properly notified about the hearing held by telephone on December 16, 2020. Steve Naber, the claimant's father, participated on her behalf. The employer participated through Amy Vonderhaar, Director of Human Resources, and Michelle Armstrong, Vocational Director. The Claimant's Exhibit A was received.

ISSUES:

Did the claimant voluntarily quit employment with good cause attributable to the employer?
Is the claimant totally, partially, or temporarily unemployed?
Is the claimant able to work, available for work, and actively and earnestly seeking work effective July 12, 2020?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was hired to work in a full-time, Dayhab Coordinator position beginning on February 4, 2020. In mid-March, the dayhab program was closed due to the COVID-19 pandemic. The claimant agreed to pick up other full-time hours with the employer working as a care professional in houses with clients. This required her to work longer shifts and, sometimes, overnight shifts.

The claimant began to experience illness and frequently called in to work. On June 10, she elected to go to a part-time position because she did not want to work the longer or overnight hours. On June 16, the claimant agreed to go to an on-call position because she no longer wanted to have to find a replacement when she called in. In an on-call position, the claimant is responsible for using the employer's scheduling system to sign up for shifts available that she

wants to work. The claimant is still an employee, but has not elected to work any shifts since June 16.

The claimant filed her claim for benefits effective July 12, 2020. The claimant has other, part-time wages in her base period; however, she does not have enough wage credits from her other employers to be monetarily eligible on just those wages.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant has not separated from employment and she is not considered to be unemployed. Benefits are denied.

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:

Definitions.

38. 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. 871-24.22(2)i provides, in relevant part:

Benefit 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. . .

i. On-call workers.

(1) Substitute workers (i.e., post office clerks, railroad extra board workers), who hold themselves available for one employer and who do not accept other work, are not available for work within the meaning of the law and are not eligible for benefits.

...

(3) An individual whose wage credits earned in the base period of the claim consist exclusively of wage credits by performing on-call work, such as a banquet worker, railway worker, substitute school teacher or any other individual whose work is solely on-call work during the base period, is not considered an unemployed individual within the meaning of Iowa Code section 96.19(38)"a" and "b." An individual who is willing to accept only on-call work is not considered to be available for work.

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.

The decision in this case rests, at least in part, upon the credibility of the parties. The claimant elected to participate through an individual who did not have any direct knowledge of the situation. No request to continue the hearing was made. As the employer presented direct,

first-hand testimony, while the claimant relied upon second-hand reports, the administrative law judge concludes that the employer's recollection of the events is more credible than that of the claimant's witness.

As the claimant has elected to work only on-call or as needed, she is not considered to be unemployed within the meaning of the law. When an individual agrees to work on-call, the implied agreement is that they will only work when work is available and that work will not be regularly available. Thus, any diminution in hours is directly related to the on-call status when work is not available as no regular hours were guaranteed. Accordingly, benefits are denied effective July 12, 2020.

DECISION:

The October 19, 2020, reference 02, unemployment insurance decision is modified in favor of the appellant. The claimant has not separated from employment at this time, and she is not disqualified from receiving benefits until she earns ten times her weekly benefit amount in insured wages. However, she is currently not considered unemployed because of her on-call employment status and is disqualified each week she elects only to work on-call employment. Benefits are denied effective July 12, 2020.



Stephanie R. Callahan
Administrative Law Judge

January 4, 2021
Decision Dated and Mailed

src/scn

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, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to self-certify for PUA to determine your eligibility under the program.** Additional information on how to self-certify for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.