

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**FATIMA A NOOR**  
Claimant

**LINK ASSOCIATES**  
Employer

**APPEAL 21A-UI-04266-SC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/12/20**  
**Claimant: Respondent (2)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions  
Iowa Code § 96.19(38) – Total, Partial, and Temporary Unemployment  
Iowa Code § 96.7(2)a(2) – Employer Chargeability

**STATEMENT OF THE CASE:**

On January 22, 2021, Link Associates (employer) filed an appeal from the January 12, 2021, reference 02, unemployment insurance decision that allowed benefits effective April 12, 2020, based upon the determination Fatima A. Noor (claimant) was placed on a short-term or temporary layoff. After due notice was issued, a telephone hearing was held on April 7, 2021. The claimant did not respond to the hearing notice and did not participate. The employer participated through Robin Stewart, HR Manager. No exhibits were offered into the record. The administrative law judge took official notice of the administrative record, specifically the claimant's claim and wage histories.

**ISSUES:**

Is the claimant totally, partially, or temporarily unemployed?  
Was the claimant able to work and available for work effective April 12, 2020?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began working for the employer in a full-time position on March 28, 2013. She transferred to a part-time Residential Counselor position in March 2014, and was scheduled to work 28 hours a week from 8:00 a.m. on Saturday to midnight on Sunday.

The claimant filed her claim for benefits effective April 12, 2020, and filed weekly claims through the week ending October 31. The claimant reported wages earned each week from May 3 through May 30, totaling \$855. She did not report wages earned during any other week. The claimant's wage history shows the employer paid her \$1,367 during the second quarter of 2020, or from April 1 through June 30.

The employer continued to have work available, even during the COVID-19 pandemic. The claimant had hours available to her through July 25, but elected not to work due to fear of

contracting COVID-19. Any week she did work from April 12 through July 25, she worked her standard 28-hour shift.

The claimant voluntarily left employment on July 28. Whether the claimant's separation qualifies her for benefits and whether she is able to and available for work effective July 26 has not been investigated or adjudicated by the Benefits Bureau.

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

For the reasons that follow, the administrative law judge concludes that the claimant was not eligible for benefits from April 12 through July 25, 2020. 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 § 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. 871-24.22 provides, in relevant part:

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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

b. Interpretation of ability to work. The law provides that an individual must be able to work to be eligible for benefits. This means that the individual must be physically able to work, not necessarily in the individual's customary occupation, but able to work in some reasonably suitable, comparable, gainful, full-time endeavor, other than self-employment, which is generally available in the labor market in which the individual resides.

(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.

...

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

Iowa Admin. Code r. 871-24.23 provides, in relevant part:

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

...

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

...

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

...

(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 unemployed to be eligible for benefits. Iowa Code § 96.19(38). In order to be partially unemployed, an individual must be 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 requested a part-time position. Any week in which she worked and earned wages, she worked the same shift for which she had been hired. Therefore, she cannot be partially unemployed during the weeks in which she worked and earned wages.

The next issue is whether she was totally or temporarily unemployed during the weeks in which she did not work and earn wages and if she is considered able to and available for work. Total and temporary unemployment occur when an individual has received no wages and performed no services during any given week. *Id.* Temporary unemployment occurs when the employer elects to put an employee on leave due to a lack of work. In this case, any weeks in which the claimant did not perform work or earn wages it was by her choice. The employer had work available for her, but she elected not to work. Therefore, she was totally unemployed and must be able to and available for work to be eligible for benefits.

An individual claiming benefits has the burden to prove that she is able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. The claimant was voluntarily unemployed and not considered able to and available for work. Accordingly, she is not eligible for unemployment insurance benefits.

The claimant is not eligible for benefits from April 12 through July 25, 2020, because she either was not unemployed or was not able to and available for work. Whether the claimant's separation on July 28 qualifies her for benefits and whether she is able to and available for work effective July 26, is remanded to the Benefits Bureau for a fact-finding interview and unemployment insurance decisions.

**DECISION:**

The January 12, 2021, reference 02, unemployment insurance decision is modified in favor of the appellant. The claimant is not unemployed under Iowa law or not able to work and available for work from April 12 through July 25, 2020. Benefits are denied.

**REMAND:**

Whether the claimant's separation on July 28 qualifies her for benefits and whether she is able to and available for work effective July 26, is remanded to the Benefits Bureau for a fact-finding interview and unemployment insurance decisions.



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Stephanie R. Callahan  
Administrative Law Judge

April 12, 2021  
Decision Dated and Mailed

src/lj

*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 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.