

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**CARMEN A PHILLIPS**

Claimant

**APPEAL 21A-UI-08901-ED-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**NORTHEAST IOWA COMMUNITY COLLEGE**

Employer

**OC: 03/29/20**

**Claimant: Appellant (1)**

Iowa Code § 96.19(38) – Total and Partial Unemployment  
Iowa Code § 96.4(3) – Able to and available for work  
Iowa Code § 96.7(2)(A)(2) – Same Hours and Wages  
Iowa Admin. Code r. 871-24.23(26) – Availability Disqualifications

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the March 4, 2021 unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on May 28, 2021. Claimant participated personally. Employer participated through Connie Kunnen.

**ISSUES:**

Is the claimant eligible for partial unemployment insurance benefits?  
Is the claimant able to work and available for work?  
Is claimant still employed at the same hours and same wages?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on October 21, 2015 working on an as needed basis as an adjunct health faculty accompanying students to clinicals, without a guarantee of hours. Claimant typically worked approximately eight hours per month. Due to COVID-19 the employer was not allowed to assign health faculty to accompany students to clinicals. Claimant did not work for the employer in April through July 2020.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is not totally or partially unemployed during the time in question.

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 96.4(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)i(3) 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....

- i. On-call workers.

(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 96.1A(37)"a" and "b." An individual who is willing to accept only on-call work is not considered to be available for work.

Under these rules, this category of employee is not considered to be unemployed within the meaning of the law when the only qualifying base period wage credits are related to "on-call" work. When an individual is hired 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 reduction in hours is directly from a reduction in the available work as no regular hours are guaranteed. Claimant has only on-call wages in her base period with this employer. Accordingly, the claimant is not considered an unemployed individual. Benefits are denied.

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.

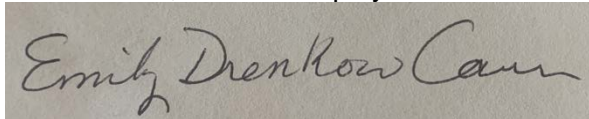
(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

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.*

As a part-time employee claimant worked in PRN status or "as needed." Claimant only worked when there was work available. Claimant was employed at the same hours and wages as contemplated in the original contract for hire, which included the possibility that there would be zero hours. Claimant is not totally or partially unemployed. Benefits are denied.

**DECISION:**

The March 4, 2021 unemployment insurance decision is affirmed. Benefits are denied.

A handwritten signature in dark ink on a light-colored background. The signature reads "Emily Drenkow Carr" in a cursive, flowing script.

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Emily Drenkow Carr  
Administrative Law Judge

June 16, 2021  
Decision Dated and Mailed

ed/scn