

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**DEE A GREMS**

Claimant

**APPEAL 21A-UI-07005-AW-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE UNIVERSITY OF IOWA**

Employer

**OC: 12/06/20**

**Claimant: Appellant (4R)**

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Iowa Code § 96.1A(37) – Definitions – Total, partial unemployment  
Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search  
Iowa Code § 96.7(2)A(2) – Charges – Same base period employment  
Iowa Admin. Code r. 871-24.23(26) – Eligibility – A&A – Part-time same hours, wages

**STATEMENT OF THE CASE:**

Claimant filed an appeal from the March 4, 2021 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on May 18, 2021, at 2:00 p.m. Claimant participated. Employer participated through Logan Stevens, Accountant. No exhibits were admitted. Official notice was taken of the administrative record.

**ISSUES:**

Whether claimant is totally, partially or temporarily unemployed.  
Whether claimant is able to and available for work.  
Whether claimant is still employed at the same hours and wages.  
Whether employer's account is subject to charge.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began employment with The University of Iowa on September 13, 1988. Claimant is a part-time Staff Nurse, working an average of 30 hours per week. During the week ending September 19, 2020 and the week ending January 9, 2021, employer required claimant to take an unpaid furlough. Claimant performed no work and received no wages during each of those weeks. Employer's mandatory furlough was a result of Covid-19. Claimant had no barriers to employment those weeks and would have worked her regular hours if employer had allowed it. Claimant filed an initial claim for unemployment insurance benefits effective December 6, 2020 and has filed no ongoing weekly claims.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes:

Iowa Code section 96.1A(37) 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 96.1A, subsection 37, paragraph "b", unnumbered paragraph (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 Admin. 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 difference from the contract for hire, such claimant cannot be considered partially unemployed.

Iowa Code section 96.7(2)a(2) 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.

For the weeks ending September 19, 2020 and January 9, 2021, claimant performed no work and received no wages. Therefore, claimant was totally unemployed. Because claimant was totally unemployed, claimant is required to be able to and available for work. Claimant has the burden of proving that she was able to and available for work. Claimant was able to and available for work and would have worked her regular hours if employer had allowed it. Therefore, claimant was able to and available for work and, thus, is entitled to benefits.

The issue of whether claimant's original claim can be backdated to September 13, 2020 should be remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

The issue of whether the employer will be charged for regular, state-funded unemployment insurance benefits paid due to Covid-19 will be remanded to the Tax Bureau of Iowa Workforce Development for a determination in accordance with the agency's announcement that it would not charge employers for benefits paid due to Covid-19.

#### **DECISION:**

The March 4, 2021 (reference 01) unemployment insurance decision is modified in favor of appellant. Claimant was totally unemployed and able to and available for work for the benefit weeks ending September 19, 2020 and January 9, 2021. Benefits are allowed for those two weeks provided claimant is otherwise eligible and pending determination of the backdating issue on remand.

**REMAND:**

The issues of whether claimant's original claim can be backdated and whether employer should be charged for the unemployment insurance benefits paid to claimant because of Covid-19 are remanded to Iowa Workforce Development for a determination.



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Adrienne C. Williamson  
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May 25, 2021  
Decision Dated and Mailed

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