

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KEELIN SHANNON

Claimant

CATHOLIC HEALTH INITIATIVES – IOWA

Employer

APPEAL 21A-UI-15397-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/28/21

Claimant: Appellant (2R)

Iowa Code § 96.19(38) – 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:

The claimant filed an appeal from the June 30, 2021 (reference 01) unemployment insurance decision that denied benefits effective March 28, 2021. The parties were properly notified of the hearing. A telephone hearing was held on September 28, 2021, at 1:05 p.m. This hearing was conducted at the same time as 21A-UI-15529-SN-T. The employer did participate. 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:

The claimant worked for the employer, Catholic Health Initiatives, and its predecessor in interest as a full-time Licensed Practicing Nurse (LPN) from June 22, 2016 to October 20, 2020. Her rate of pay was \$22.90 per hour.

On October 20, 2020, the claimant was told she was not allowed to return to the building. Management informed her that she was being charged with a crime that made her no longer eligible to work for the employer. The claimant has asked to return several times and has been told she cannot return.

Since being separated from work, the claimant has been seeking full-time and part-time positions. She is able and available for work. The administrative record KCCO shows the

claimant has not entered these job contacts in when she has applied at these other places of employment.

On March 28, 2021, the claimant requested a leave of absence because the employer's human resources department informed her that she remain in the system by doing so. The claimant was informed that the leave of absence could only be approved until July 24, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was totally unemployed beginning October 20, 2020. The claimant was able and available effective March 28, 2021.

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", 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 Admin. R. 871-24.23(26)(10) provides:

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.

(28) A claimant will be ineligible for benefits because of failure to make an adequate work search after having been previously warned and instructed to expand the search for work effort.

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.

...

(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.

...

(3) Earnestly and actively seeking work. Mere registration at a workforce development center does not establish that the individual is earnestly and actively seeking work. It is essential that the individual personally and diligently search for work. It is difficult to establish definite criteria for defining the words earnestly and actively. Much depends on the estimate of the employment opportunities in the area. The number of employer contacts which might be appropriate in an area of limited opportunity might be totally unacceptable in other areas. When employment opportunities are high an individual may be expected to make more than the usual number of contacts. Unreasonable limitations by an individual as to salary, hours or conditions of work can indicate

that the individual is not earnestly seeking work. The department expects each individual claiming benefits to conduct themselves as would any normal, prudent individual who is out of work.

a. Basic requirements. An individual shall be ineligible for benefits for any period for which the department finds that the individual has failed to make an earnest and active search for work. The circumstances in each case are considered in determining whether an earnest and active search for work has been made. Subject to the foregoing, applicable actions of the following kind are considered an earnest and active search for work if found by the department to constitute a reasonable means of securing work by the individual, under the facts and circumstances of the individual's particular situation:

(1) Making application with employers as may reasonably be expected to have openings suitable to the individual.

(2) Registering with a placement facility of a school, college, or university if one is available in the individual's occupation or profession.

(3) Making application or taking examination for openings in the civil service of a governmental entity with reasonable prospects of suitable work for the individual.

(4) Responding to appropriate "want ads" for work which appears suitable to the individual if the response is made in writing or in person or electronically.

(5) Any other action which the department finds to constitute an effective means of securing work suitable to the individual.

(6) No individual, however, is denied benefits solely on the ground that the individual has failed or refused to register with a private employment agency or at any other placement facility which charges the job-seeker a fee for its services. However, an individual may count as one of the work contacts required for the week an in-person contact with a private employment agency.

(7) An individual is considered to have failed to make an effort to secure work if the department finds that the individual has followed a course of action designed to discourage prospective employers from hiring the individual in suitable work.

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.

An employee is partially unemployed and does not have to be able to work, available for work, and actively and earnestly seeking work, if during any week they work less than their regular full-time hours and earn less than their weekly benefit amount plus fifteen dollars or if they are laid off due to a lack of work for no more than four weeks. The record establishes the claimant was not temporarily laid off due to lack of work, but was fully and permanently separated from employment on October 20, 2020 after being told she was ineligible to return to the employer's premises due to being charged with a crime.

The administrative law judge disagrees with the representative's disposition of the case. While it is true the claimant requested and was granted a leave of absence, her inability to work at the employer's business preceded her request. On October 20, 2020, the employer imposed total unemployment. In order for a leave of absence to make a claimant ineligible, it must be with the consent of both parties. The claimant's request for leave in March 28, 2021 does not transform her compulsory absence from work into a voluntary one.

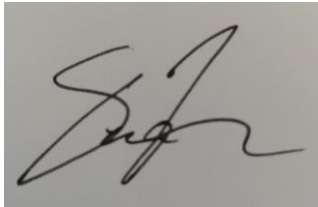
Since the claimant is totally unemployed, she must remain able to work, available for work, and actively and earnestly seeking work to remain eligible for benefits. An individual claiming benefits has the burden of proof that he is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. The administrative record shows the claimant has not conducted any job searches effective October 20, 2020 when she became totally unemployed. The claimant has not received any prior warning to expand her job search. This is the claimant's warning that she must expand her job search and conduct two job searches each week. However, as she did not receive a prior warning, benefits are allowed effective October 20, 2020.

DECISION:

The June 30, 2021 (reference 01) unemployment insurance decision is reversed. The claimant has been totally unemployed since October 20, 2020. She was able and available for work effective March 28, 2021. Benefits are granted.

REMANDS:

The issue of whether the claimant's separation from employment on October 20, 2020 qualifies her for benefits is remanded to the Benefits Bureau of IVD for an initial investigation and determination. Additionally, the claimant's group code needs to be updated to a "6" and work searches are required.



Sean M. Nelson
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September 30, 2021
Decision Dated and Mailed

smn/mn