

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CANDACE M HOUSE

Claimant

APPEAL 20A-UI-05305-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOOD SAMARITAN SOCIETY INC

Employer

OC: 03/29/20

Claimant: Appellant (1)

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.19(38)B – Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Part time, same hours and wages

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the May 28, 2020 (reference 01) unemployment insurance decision that found claimant was not eligible for unemployment benefits due to her working the same hours and same wages. The parties were properly notified of the hearing. A telephone hearing was held on July 6, 2020. The claimant, Candace M. House, participated personally. The employer, Good Samaritan Society Inc., did not participate. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUES:

Is the claimant eligible for total or partial unemployment benefits?
Is claimant employed for the same hours and wages?
Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant started working for this employer during a second period of employment on January 20, 2020. She is still employed to date. In January of 2020 she started working part-time as a certified nursing assistant and certified medication aide at the employer's long term care facility. When her two minor children's school and daycare closed due to the COVID 19 pandemic in the middle of March 2020, claimant requested that she move to a PRN status, which is on-call as needed. She has worked on call and as needed since switching to that position. Her hours on-call or as needed vary and are not guaranteed.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 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", subparagraph (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)b provides:

As used in this chapter, unless the context clearly requires otherwise:

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 Code § 96.7(2)a(2)a provides:

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.

(emphasis added).

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.

Because claimant was hired to work only on-call hours, and she was not guaranteed a specific amount of weekly hours, the claimant is not considered to be unemployed within the meaning of the law. When an individual is hired to work on-call, the implied agreement is that full-time, or even consistent part-time work will not be regularly available. Thus, since the employer continues to provide the same employment and the claimant is currently employed under the same hours and wages as contemplated when she requested to be changed to PRN status, she is not considered partially unemployed. Benefits are denied effective March 29, 2020.

While the claimant may not be eligible for regular State of Iowa unemployment insurance benefits, she may be eligible for unemployment insurance benefits that have been made available to claimants under the Coronavirus Aid, Relief, and Economic Security Act (“Cares Act”). The Pandemic Unemployment Assistance (“PUA”) section of the Cares Act discusses eligibility for claimants who are unemployed due to the Coronavirus. For claimants who are ineligible for regular unemployment insurance benefits under Iowa Code Chapter 96, they may be eligible under PUA.

Note to Claimant: If this decision determines you are not eligible for regular unemployment insurance benefits and 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 apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.

DECISION:

The May 28, 2020 (reference 01) decision is affirmed. Claimant is still employed at the same hours and same wages and is therefore not unemployed. Benefits are denied effective March 29, 2020.

Dawn Boucher
Administrative Law Judge

July 14, 2020
Decision Dated and Mailed

db/scn