

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KIM A BAKER
Claimant

APPEAL 21A-UI-04148-AD-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

ST ANTHONY REGIONAL HOSPITAL
Employer

OC: 03/22/20
Claimant: Appellant (5)

Iowa Admin. Code r. 871-24.23(26) – Eligibility – A&A – Part-time same hours, wages

STATEMENT OF THE CASE:

On January 29, 2021, Kim Baker (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated January 25, 2021 (reference 02) that denied benefits as of January 10, 2021 based on a finding claimant was still employed in an on-call position.

A telephone hearing was held on April 5, 2021. The parties were properly notified of the hearing. Claimant participated personally. St Anthony Regional Hospital (employer/respondent) participated by HR Director Anna Fitzpatrick.

Official notice was taken of the administrative record.

ISSUE(S):

- I. Is the claimant totally, partially, or temporarily unemployed?
- II. Is the claimant able to and available for work?
- III. Is the claimant still employed at the same hours and wages? Is the employer's account subject to charge? Is the claimant an on-call worker?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant began working for employer on August 31, 2020. Claimant is still employed by employer in a temporary, part-time, as-needed position. Claimant has always been free to accept or reject hours offered in this position.

Claimant was initially working as a COVID-19 door screener. He initially worked about 15 hours per week in this position. This was typically during afternoons and evenings, as he was generally unavailable for work during the day because of childcare issues.

Employer no longer had as much need for door screening work beginning in 2021. As such, the number of hours claimant worked each week declined at that time. Employer subsequently offered claimant more work as part of its vaccination clinic. However, claimant has largely had to reject that work, as the clinic operates during daytime hours.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the decision dated January 25, 2021 (reference 02) that denied benefits as of January 10, 2021 based on a finding claimant was still employed in an on-call position is MODIFIED with no change in effect.

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 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 Admin. Code r. 871-24.23(26) provides:

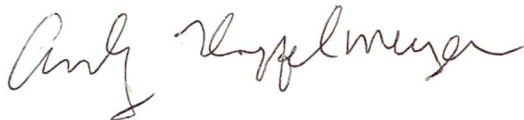
Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(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.

The administrative law judge finds claimant is still employed by employer in the same way as contemplated in the original contract of hire. Specifically, claimant is still employed in a temporary, part-time, as-needed position. While there is less work available for claimant now and he is therefore working fewer hours, that is the nature of the position he accepted. The decline in work is also due at least in part to claimant rejecting offered work due to his lack of availability. Because claimant is still employed by employer as contemplated in the original contract of hire, he cannot be considered partially unemployed. Benefits are therefore denied.

DECISION:

The decision dated January 25, 2021 (reference 02) that denied benefits as of January 10, 2021 based on a finding claimant was still employed in an on-call position is MODIFIED with no change in effect. Claimant is still employed as contemplated in the original contract of hire and is therefore not partially unemployed. Benefits must be denied.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

April 8, 2021

Decision Dated and Mailed

abd/kmj

Note to Claimant:

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are 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.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.