

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**BRAYDE L HANSEN**  
Claimant

**DUBUQUE COUNTY**  
Employer

**APPEAL 20A-UI-08316-NM-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/12/20**  
**Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Availability Disqualifications  
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment  
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

**STATEMENT OF THE CASE:**

On July 6, 2020, the claimant filed an appeal from the June 30, 2020, (reference 01) unemployment insurance decision that denied benefits based on a determination that she was still employed in the same capacity as contemplated at the time of hire. A telephone hearing was held on August 26, 2020. Claimant participated and testified. Employer did not participate. Claimant's Exhibit A was received into evidence. Official notice was taken of claimant's WAGE record.

**ISSUES:**

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

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant has worked for employer since July 2017. Most recently, claimant works for employer as a part-time certified nursing assistant/program inspector.

Claimant has always worked for this employer on a part-time basis. When she was first hired, she was not guaranteed a set number of hours, but was generally given two to three shifts per week. In the fall of 2019, claimant requested a reduced work schedule so she could attend school on a full-time basis. Claimant attended school full-time during the fall of 2019 and spring 2020 semesters. Claimant made an agreement with the employer that she would work eight hours every six weeks. However, the employer has not had hours to schedule her since the COVID 19 pandemic hit Iowa. The last time claimant worked for the employer was February 2, 2020. When claimant was not scheduled for the agreed upon eight hours in the six-week time

period following her last shift, she considered herself to have been separated from that employment.

Claimant took three credit hours over the summer, but has since returned to school full-time for the fall 2020 semester. Claimant reported she was also working for the University of Iowa on a part-time basis, but those wages do not appear in her base-period.

## **REASONING AND CONCLUSIONS OF LAW:**

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.

In order to receive regular unemployment insurance benefits under Chapter 96 of the Iowa Code, a totally unemployed claimant must establish he or she is able to and available for work. Iowa Code § 96.4(3).

In this case, the claimant is totally unemployed. So the issue is whether she is able to and available for work.

Iowa Admin. Code r. 871-24.23 provides:

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

(5) Full-time students devoting the major portion of their time and efforts to their studies are deemed to have no reasonable expectancy of securing employment except if the students are available to the same degree and to the same extent as they accrued wage credits they will meet the eligibility requirements of the law.

...

(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.

...

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

Here, the claimant and the employer made an agreement to limit claimant's hours, at her request, in order to allow her to attend school full-time. Up until that point in time, the employer had additional hours available for claimant and she had been working those additional hours. Claimant continued this through the 2020 spring semester and is now attending school again on a full-time basis. The number of hours claimant was willing to work at the time her claim was filed, is not consistent with the hours worked throughout most of her base period. Claimant indicated she had more availability to work over the summer, as she was not in school full-time, however, she had considered herself separated from this employer at that time. Claimant has not established she is able to and available for work, even under the United States Department of Labor's guidance to flexibly interpret this requirement. See Unemployment Insurance Program Letter No. 10-20.

Even though claimant is not eligible for regular unemployment insurance benefits under state law, she may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed. Claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

**DECISION:**

The June 30, 2020, (reference 01) unemployment insurance decision is affirmed. The claimant is not able to work and available for work effective April 12, 2020. Regular unemployment insurance benefits funded by the state of Iowa are denied until such time claimant is able to and available for work.



---

Nicole Merrill  
Administrative Law Judge

August 31, 2020  
Decision Dated and Mailed

nm/sam

**NOTE TO CLAIMANT:**

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. If 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.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA, you may be required to repay the benefits you've received so far.**