

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**ARLENE J SCHAR**  
Claimant

**RECOVER HEALTH SERVICES LLC**  
Employer

**APPEAL 21A-UI-16689-LJ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/13/20**  
**Claimant: Appellant (1)**

Iowa Code § 96.19(38) – Total, Partial, and Temporary Unemployment  
Iowa Code § 96.4(3) – Ability to and Availability for Work

**STATEMENT OF THE CASE:**

On July 28, 2021, claimant Arlene J. Schar filed an appeal from the July 26, 2021 (reference 03) unemployment insurance decision that denied benefits based on a determination that claimant was still employed in an on-call capacity and was not eligible for benefits effective March 28, 2021. The parties were properly notified of the hearing. A telephonic hearing was held at 8:00 a.m. on Tuesday, September 21, 2021. The claimant, Arlene J. Schar, participated. The employer, Recover Health Services, L.L.C., participated through Teresa Ratliff-Little, Client Service Supervisor. Claimant's Exhibit A, pages 1 through 54, and Employer's Exhibit 1 were received and admitted into the record without objection. The administrative law judge took official notice of the administrative record.

**ISSUES:**

Effective March 28, 2021, was the claimant totally, partially, or temporarily unemployed?  
Effective March 28, 2021, was the claimant able to work and available for work?

**FINDINGS OF FACT:**

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

Claimant was hired to work for employer Recover Health Services, L.L.C., on January 4, 2021. Claimant was initially hired as a full-time private duty nurse. She spent her initial month of employment in orientation. She then began working shifts as a private duty nurse on February 7, 2021. Claimant ultimately separated from employment on July 18, 2021. That separation has not yet been the subject of a fact-finding interview with Iowa Workforce Development.

During February and March, claimant worked from 7:00 a.m. until 7:00 p.m. every Friday, Saturday, and Sunday. Claimant commuted for each shift from her home in Fairfield to the client's home in Burlington. She admits to frequently complaining about disliking the long drive. In late March, claimant had a telephone conversation with Ratliff-Little about changing her schedule. Claimant expressed that the round-trip drive from Fairfield to Burlington was too

much for her and wanted to cut back her hours to working every other weekend only. Ratliff-Little spoke with the family of the client who claimant cared for, and the family accepted this arrangement, provided the employer agree to continue actively recruiting for the available hours. The employer continued to have full-time work available for the claimant throughout April, May, June, and early July 2021.

In the spring of 2021, the employer hired several day nurses to care for the same client that claimant cared for. Generally, adding these nurses to the schedule did not affect claimant's schedule. However, on rare occasions when claimant wanted to come in late and then stay late at the end of her shift (the following morning), she was not able to do this because another nurse was already scheduled to start a shift and two nurses were not permitted to work at the same time.

Claimant initially opened her unemployment claim with an effective date of September 13, 2020. She filed for several weeks and then stopped claiming for benefits prior to obtaining employment with this employer. She then reopened her claim with an additional date of March 28, 2021. Claimant filed weekly continued claims and received partial unemployment benefits for sixteen weeks, from the benefit week ending April 3, 2021, through the benefit week ending July 17, 2021.

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

For the reasons that follow, the administrative law judge concludes claimant was neither totally nor partially unemployed. Benefits are withheld.

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", 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 § 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(16) and (26) provide:

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

(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.

(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.

Under Iowa Employment Security Law, an individual must be totally or partially unemployed to be eligible for benefits. Iowa Code § 96.19(38). Total unemployment is when someone has received no wages and performed no services during any given week. *Id.* In this case, the claimant has performed services and earned wages for each week she has claimed benefits. She is not totally unemployed.

The next question is whether she is partially unemployed. In order to be partially unemployed, an individual must be laid off from full-time employment or working less than their regular full-time work week. *Id.* If an individual is employed in a part-time position working the same hours and wages as contemplated at hire, they cannot be considered partially unemployed. Iowa Admin. Code r. 871-24.23(26).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the employer's witnesses presented more credible testimony than the claimant. The more reasonable reading of the evidence is that claimant requested to limit her hours, not that the employer limited claimant's hours.

Here, claimant was initially hired as a full-time employee. However, after approximately three months of employment, the credible evidence in the record establishes that claimant requested a part-time position due to the length of the commute her position involved. As the claimant began working in a part-time job per her own request, the claimant is not partially unemployed and is not eligible for benefits.

**DECISION:**

The July 26, 2021 (reference 03) unemployment insurance decision is affirmed. Claimant was neither totally nor partially unemployed through no fault of her own. Benefits are withheld.



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Elizabeth A. Johnson  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau

September 24, 2021  
Decision Dated and Mailed

lj/scn