

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**ANDREA TATE**

Claimant

**GRAPETREE MEDICAL STAFFING INC**

Employer

**APPEAL 21R-UI-20161-AD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/03/21**

**Claimant: Respondent (2R)**

Iowa Code section 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

On April 12, 2021, Grapetree Medical Staffing Inc (employer/appellant) filed an appeal from the decision dated April 7, 2021 (reference 01) that allowed benefits beginning January 3, 2021 based on a finding claimant was able and available for work.

A telephone hearing was held on June 28, 2021. The parties were properly notified of the hearing. Employer participated by HR Specialist Danielle Einck. Andrea Tate (claimant/respondent) and her attorney could not be reached at the time of hearing at the numbers registered and so did not participate. A decision was issued on July 9, 2021, denying benefits.

Claimant appealed the decision to the Employment Appeal Board (EAB), which remanded for a new hearing. A hearing was held on November 2, 2021. Claimant participated personally and was represented by Attorney Eric Mail. Employer participated by HR Specialist Danielle Einck. HR Manager Erin Stevens and HR Specialist Zachary Myer participated as witnesses for employer.

Employer's Exhibit 1 was admitted. Official notice was taken of the administrative record.

**ISSUES:**

Is the claimant able and available for work?

**FINDINGS OF FACT:**

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

Claimant began working for employer on January 29, 2018. Claimant was hired as an on-call CNA. Claimant is still employed by employer in that capacity. Claimant most recently performed work for employer on October 30, 2021. In claimant's on-call position, employer makes no guarantee of availability of hours and claimant is not obligated to work a minimum number of hours. Claimant is free to accept or reject offered shifts. Shifts are offered and can be accepted through text messages and an online portal claimant has access to.

Claimant worked just one shift in the first quarter of 2021, in January. She did not pick up other shifts until May 30, 2021 and June 16, 2021. There were many shifts available during this period, as reflected in Employer's Exhibit 1. Claimant was not accepting shifts during this period in part because of childcare issues which limited her availability during the day. She was also not accepting work in part because some work was too far away, was offered with short notice, or was already accepted by another employee. Claimant was not working elsewhere during this period.

Claimant filed a claim for benefits each week from the benefit week ending January 9, 2021 through the benefit week ending June 12, 2021. She did not report earning any wages during this period. Claimant's wage credits in the base period – from the fourth quarter of 2019 through the third quarter of 2020 – consist entirely of wages earned with employer in an on-call capacity.

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

For the reasons that follow, the April 7, 2021 (reference 01) unemployment insurance decision that determined Andrea Tate (claimant/respondent) was eligible to receive unemployment insurance benefits effective January 3, 2021 based on a finding claimant was able and available for work is REVERSED. Claimant is ineligible for benefits during the weeks filed.

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 Admin. Code r. 871-24.22(2)i provides:

Benefit 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.

i. On-call workers.

(1) Substitute workers (i.e., post office clerks, railroad extra board workers), who hold themselves available for one employer and who do not accept other work, are not available for work within the meaning of the law and are not eligible for benefits.

(3) An individual whose wage credits earned in the base period of the claim consist exclusively of wage credits by performing on-call work, such as a banquet worker, railway worker, substitute school teacher or any other individual whose work is solely on-call work during the base period, is not considered an unemployed individual within the meaning of Iowa Code section 96.19(38)"a" and "b." An individual who is willing to accept only on-call work is not considered to be available for work.

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.

Claimant has not carried her burden of proving she was able and available for work during the weeks filed. The evidence instead shows claimant's wage credits in the base period consisted entirely of on-call work and that she was not working elsewhere during the relevant timeframes. As set forth above, a claimant whose work in the base period consists solely of on-call work is not an unemployed individual within the meaning of the law. Benefits are therefore denied during the weeks filed.

The administrative law judge notes claimant's argument that it was difficult for her to pick up the shifts offered during the timeframe at issue, in part because of where shifts were, when they were offered, and how quickly others responded to them. However, this is simply the nature of the on-call working relationship: work is offered as it becomes available and employees are free to accept or reject it. This was also in significant part due to claimant's childcare issues, which limited her availability and which were no fault of employer.

The administrative law judge notes claimant has been allowed federal Pandemic Unemployment Assistance (PUA) in the amount of \$242.00 per week from January 3, 2021 through June 12, 2021. It does not appear PUA has yet been paid to claimant, likely due to these pending appeals.

**DECISION:**

The April 7, 2021 (reference 01) unemployment insurance decision that determined Andrea Tate (claimant/respondent) was eligible to receive unemployment insurance benefits effective January 3, 2021 based on a finding claimant was able and available for work is REVERSED. Claimant is ineligible for benefits during the weeks filed.

**REMAND:**

This matter is remanded to the Department for issuance of PUA payments due to claimant. The administrative law judge notes the Department may withhold a portion of the PUA payments in order to offset outstanding overpayments.



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December 1, 2021  
Decision Dated and Mailed

abd/mh