

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KRISTYN D VAN NEVEL
Claimant

MERCY HOSPITAL
Employer

APPEAL NO. 20A-UI-08920-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/19/20
Claimant: Appellant (1)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.19(38) – Temporary and Partial Unemployment

STATEMENT OF THE CASE:

Kristyn Van Nevel filed a timely appeal from the July 16, 2020, reference 01, decision that denied benefits effective April 19, 2020, based on the deputy's conclusion that Ms. Van Nevel was not partially unemployed within the meaning of the law. After due notice was issued, a hearing was started on September 11, 2020 and concluded on September 28, 2020. Ms. Van Nevel participated. Jackeline Garcia represented the employer and presented additional testimony through Glenda Sulentich. Exhibits A through J were received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX and WAGE-A.

ISSUES:

Whether the claimant was able to work and available for work during the period of April 19, 2020 through June 13, 2020.

Whether the claimant was partially and/or temporarily unemployed during the period of April 19, 2020 through June 13, 2020.

Whether the employer's account may be charged for benefits for the period of April 19, 2020 through June 13, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant is employed as a part-time Assistant Director of Nursing and as a PRN emergency room nurse. The claimant's wage is \$39.68 per hour for both sets of duties. The Assistant DON duties provide a consistent 16 hours of work per week, which translates to weekly earnings of \$633.88. The PRN work the claimant performs in the emergency rooms is not of the last-minute, on-call variety that pertains to other areas of the workplace. Rather, the claimant knows a month and a half in advance the shifts that need coverage, signs up for shifts she is available to cover, and then become obligated to work those shifts. In April 2020, the emergency room temporarily eliminated PRN shifts, including those already scheduled. The elimination of the PRN emergency rooms shifts was based on a COVID-19 based substantial reduction in the daily patient census in the emergency room. Despite this loss of work in the

emergency room, the claimant continued to receive her 16 weekly Assistant DON hours and pay.

The claimant filed an original claim for benefits that was effective April 19, 2020. She filed the claim in response to the loss of emergency room hours. This employer is a base period employer. Iowa Workforce Development set the claimant's weekly benefit amount at \$518.00. The claimant made weekly claims for each of the eight weeks between April 19, 2020 and June 13, 2020. For three of those weeks, the claimant reported wages that exceeded her weekly benefit amount by more than \$15.00. For five of the weeks, the claimant reported wages that were less than her weekly benefit amount, sometimes substantially less, even though the claimant continued to receive at least \$633.88 in weekly wages. Iowa Workforce Development paid partial regular benefits for the five weeks for which the claimant under-reported her earnings. IWD also paid out \$600.00 in Federal Pandemic Unemployment Compensation for each of those five weeks.

REASONING AND CONCLUSIONS OF LAW:

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) provides:

Benefits 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.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code r. 871-24.23 provides, in relevant part, as follows:

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

If a claimant 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. Iowa Code section 96.7(2)(a)(2)(a).

The claimant was able to work and available for work within the meaning of the law during each of the weeks between April 19, 2020 and June 13, 2020. However, the claimant was not temporarily or partially unemployed during any of those weeks. During each of the eight weeks, the claimant may have been working reduced hours due to the loss of emergency room hours, but was still consistently earning weekly wages that exceeded her \$518.00 weekly benefit amount by more than \$15.00. The claimant is not eligible for benefits for the period of April 19, 2020 and June 13, 2020. The employer's account will not be charged for benefits for that period.

DECISION:

The July 16, 2020, reference 01, is affirmed. The claimant was able to work, available for work, but not partially unemployed within the meaning of the law during the period of April 19, 2020 through June 13, 2020. The claimant is not eligible for benefits for the period of April 19, 2020 and June 13, 2020. The employer's account will not be charged for benefits for that period.



James E. Timberland
Administrative Law Judge

September 30, 2020
Decision Dated and Mailed

jet/sam