

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**EMILY ALLGOOD**  
Claimant

**APPEAL 21A-UI-05598-S2-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE UNIVERSITY OF IOWA**  
Employer

**OC: 06/07/20**  
**Claimant: Appellant (1)**

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Iowa Code § 96.19(38)a & b – Total and Partial Unemployment  
Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22(2)(i) – Able & Available – On-call Worker  
Iowa Admin. Code r. 871-24.23(26) – Availability Disqualifications Same Hours and Wages  
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the February 16, 2021, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on April 26, 2021. The hearing notice for this appeal had the incorrect issues listed; however, both parties waived notice on the relevant issues and the hearing proceeded. The claimant participated personally and testified. Employer participated through human resource business analyst Jessica Wade. Claimant's Exhibits A-F were admitted. The administrative law judge took official notice of the administrative file.

**ISSUES:**

Is the claimant totally, partially, or temporarily unemployed?  
Was the claimant able to and available for work effective June 7, 2020?  
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: The claimant is employed as a staff nurse for this employer, on a PRN, or as-needed bases only. Staff nurses expected to schedule themselves to work 24 hours every four weeks to maintain their skills. Hours fluctuate based upon business needs. Claimant agreed to the arrangement at the time of hire.

Claimant established her claim with an effective date of June 7, 2020. For a period of time, claimant did not perform work due to low-census or shifts being given to other full-time employees. Claimant's shifts resumed in October 2020 and she discontinued making claims for benefits. Her base period consists only of this employer.

**REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge concludes as follows:

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 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 96.1A, subsection 38, paragraph "b", subparagraph (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(3) 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....

i. On-call workers.

(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 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 legislature has provided a specific rule that applies to on-call workers holding that this category of worker, among others, are not considered to be unemployed within the meaning of the law when the only qualifying base period wage credits are related to "on-call" work. Because claimant agreed to work PRN or as needed, and the wage history consists of on-call wages, she is not considered to be unemployed within the meaning of the law. When an individual is hired to work on-call, the implied agreement is that they will only work when work is available and that work will not be regularly available. Thus any diminution in hours is directly related to the on-call status when work is not available as no regular hours were guaranteed.

**DECISION:**

The February 16, 2021, (reference 01) unemployment insurance decision is affirmed. Claimant was working on call and was not guaranteed work. She is therefore not considered unemployed pursuant to Iowa law. Benefits are denied effective June 7, 2020.



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Stephanie Adkisson  
Administrative Law Judge  
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Des Moines, Iowa 50319-0209  
Fax (515)478-3528

April 30, 2021  
Decision Dated and Mailed

sa/ol

**NOTE TO CLAIMANT:** This decision determines you are not eligible for regular unemployment insurance benefits. 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. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently 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 under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.