

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARIA F YANQUI
Claimant

RACCOON VALLEY MANAGEMENT LLC
Employer

APPEAL 20A-UI-08776-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/05/20
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions
Iowa Admin. Code r. 871-24.23(26) – Available – Part-time Same Wages and Hours
Iowa Code § 96.19(38) – Total, Partial, and Temporary Unemployment

STATEMENT OF THE CASE:

On July 23, 2020, Maria F. Yanqui (claimant) filed an appeal from the July 13, 2020, reference 01, unemployment insurance decision that denied benefits effective April 5, 2020, based upon the determination she was still employed in the same hours and wages with Raccoon Valley Management, LLC (employer) as in her contract of hire. After due notice was issued, a telephone hearing was held on September 8, 2020. The claimant participated with the assistance of Virginia Flores, her sister. The employer participated through Jennifer Carter, HR Manager. Juan (employee number 12060), Marcel (employee number 10178), and Vladamir (employee number 12764) from CTS Language Link provided Spanish interpretation for the hearing. No exhibits were offered into the record. The administrative law judge took official notice of the administrative record, specifically the claimant's claim and wage histories.

ISSUES:

Is the claimant totally, partially, or temporarily unemployed?
Was the claimant able to and available for work effective April 5, 2020?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began working for the employer on May 15, 2018, as a part-time associate. The claimant was not guaranteed a certain number of hours when she was hired, but she does try to work at least 25 hours a week. The claimant has worked for the employer each week beginning April 5, 2020, with the exception of the two weeks between May 31 and June 13 when she was ill.

The claimant filed her claim for benefits effective April 5, and her weekly benefit amount is \$330. The claimant's base period includes wage credits earned during the 2019 calendar year. The claimant worked for one other employer, Hy-Vee, during her base period. During 2019, the claimant worked part-time for Hy-Vee.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not able to and available for work effective April 5, 2020. Regular unemployment insurance benefits are denied.

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 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 provides, in relevant part:

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

(1) An individual who is ill and presently not able to perform work due to illness.

...

(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.

...

(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.

...

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

Under Iowa Employment Security Law, an individual must be totally, partially, or temporarily unemployed to be eligible for benefits. Iowa Code § 96.19(38). Total unemployment occurs when someone has received no wages and performed no services during any given week. *Id.* In this case, the claimant was totally unemployed for the two weeks between May 31 and June 13. However, she must then also be able to and available for work to be eligible for benefits. The claimant was ill and unable to work during that time. She was not able to and available for work.

The next question is whether she was partially unemployed effective April 5, during the weeks she did work and earn wages. In order to be partially unemployed, an individual must be laid off from full-time employment or working less than his or her 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, he or she cannot be considered partially unemployed. Iowa Admin. Code r. 871-24.23(26). The claimant was hired into a part-time position. She has worked part-time hours during her entire employment. The employer explained the claimant's hours would fluctuate throughout her employment. She continues to work for the employer. As the claimant is working in a part-time job in the same hours and wages contemplated at hire, she is not partially unemployed and is not eligible for benefits.

DECISION:

Regular Unemployment Insurance Benefits Under State Law

The July 13, 2020, reference 01, unemployment insurance decision is affirmed. The claimant is employed in the same hours and wages contemplated at hire effective April 5, 2020. The two weeks the claimant was totally unemployed, she was not able to and available for work due to illness. Benefits are denied.

Pandemic Unemployment Assistance (PUA) Under the Federal CARES Act

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, she may be eligible for federally funded unemployment insurance benefits under

the CARES Act. 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 in FPUC. This decision does not address whether the claimant is eligible for PUA. For a decision on such eligibility, the claimant must apply for PUA, as noted in the instructions provided in the “Note to Claimant” below.



Stephanie R. Callahan
Administrative Law Judge

September 10, 2020
Decision Dated and Mailed

src/sam

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.