

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**CALISTA R HARBAUGH**

Claimant

**APPEAL 20A-UI-08992-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**UNLIMITED SERVICES INC**

Employer

**OC: 04/19/20**

**Claimant: Appellant (1R)**

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

**STATEMENT OF THE CASE:**

The claimant/appellant, Calista R. Harbaugh, filed an appeal from the July 21, 2020 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 14, 2020. The claimant participated personally. The employer, Unlimited Services Inc., did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing.

The administrative law judge took official notice of the administrative records. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Is the claimant totally, partially, or temporarily unemployed?

Is the claimant able to and available for work?

Is the claimant still employed at the same hours and wages?

Is the employer’s account subject to charge?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began her employment with this employer during summer in 2018. She originally was hired to work as a full-time services manager. Effective first quarter of 2020, she requested to be moved to part-time due to full-time schooling at Northeast Iowa Community College.

The claimant filed a claim for benefits with an effective date of April 19, 2020 when this employer, Unlimited Services Inc., has not scheduled the claimant. Claimant had previously given the employer Tuesdays for availability, due to her schooling. She was accustomed to working the Tuesday night shift for the employer. Due to COVID-19, the employer was restructuring its staffing to keep full-time employees in one location, rather than moving from location to location during a week. Claimant has not worked the Tuesday shift because a full-

time employee is working the shift now. No evidence was presented that the claimant updated the employer to expand her availability beyond Tuesdays, in an effort to be scheduled.

Since she filed her claim for benefits, claimant has also worked for ABCM Corporation as an on-call CNA, and worked over the summer as a waitress for the Winnishiek Bar & Grille in Prairie Du Chien, Wisconsin. Claimant did not have hours worked for each employer available at the time of hearing. Claimant had to reduce her hours at the Care Center for a period when the employer learned claimant was also working at a restaurant, which increased her exposure to the public and possible exposure to COVID-19.

Claimant did not report all wages worked for Care Center and Winnishiek Bar & Grille in conjunction with her weekly continued claims because she was confused.

Claimant is not currently in school and didn't know when her summer school term ended. Claimant is currently working for ABCM Corporation.

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

For the reasons that follow, the administrative law judge concludes the claimant is not able to and available for work effective April 19, 2020.

Iowa Code § 96.19(38)b provides:

As used in this chapter, unless the context clearly requires otherwise:

38. "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. 871-24.23(5) provides:

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

(5) Full-time students devoting the major portion of their time and efforts to their studies are deemed to have no reasonable expectancy of securing employment except if the students are available to the same degree and to the same extent as they accrued wage credits they will meet the eligibility requirements of the law.

Iowa Admin. Code r. 871-24.23(16) provides:

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.

For an individual to be eligible to receive benefits, she must be able to work, available for work, and actively seeking work as required by the unemployment insurance law. Iowa Code § 96.4(3). The burden is on the claimant to establish that she is able and available for work within the meaning of the statute. Iowa Code § 96.6(2); Iowa Admin. Code r. 871-24.22.

In this case, the evidence fails to establish the claimant is able to and available for work as defined by the unemployment insurance law. In this case, the claimant restricted her availability to work for this employer to one shift per week due to full-time schooling. This restriction severely limited her availability and an employer has the right to allocate personnel in accordance with the needs and available resources. *Brandl v. Iowa Dep't of Job Serv.*, (No. \_\_\_/\_\_\_-\_\_\_, Iowa Ct. App. filed \_\_\_, 1986). No evidence was presented that the claimant ever expanded her availability in order to be considered for more than one shift per week, either after the restructuring or when her schooling ended.

In addition, while the issue of eligibility is determined on a week by week basis, claimant failed to present evidence of hours worked, wages earned, dates she began and ended employment, or the date her availability expanded due to the ending of the summer school term. The claimant has failed to meet her burden of proof to establish she is able to and available for work. Therefore, the claimant is not eligible for regular, state-funded unemployment insurance benefits.

The issue of the claimant's unrecorded wages from ABCM Corporation and the Winnishiek Bar and Grille, in conjunction with her weekly continued claims, is remanded to the Benefits Bureau for an adjustment.

*Even though the claimant is not eligible for regular unemployment insurance benefits under state law, he/she may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136.*

*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 (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed. The claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.*

**DECISION:**

The unemployment insurance decision dated July 21, 2020, (reference 01) is affirmed. The claimant is not able and available for work effective April 19, 2020. Regular unemployment insurance benefits funded by the state of Iowa are denied until such time the claimant is able to and available for work.

The issue of the claimant's unrecorded wages from ABCM Corporation and the Winnishiek Bar and Grille, in conjunction with her weekly continued claims, is remanded to the Benefits Bureau for an adjustment.

**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.
- If you do not qualify for regular unemployment insurance benefits due to disqualifying separations and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** More information about how to apply for PUA is available online at:  
[www.iowaworkforcedevelopment.gov/pua-information](http://www.iowaworkforcedevelopment.gov/pua-information)

**If you have applied and have been approved for PUA benefits, this decision will not negatively affect your entitlement to PUA benefits.**



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September 15, 2020  
Decision Dated and Mailed

jlb/scn