

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JENNIFER K PRITCHETT**  
Claimant

**PREMIER STAFFING INC**  
Employer

**APPEAL 21A-UI-01529-JC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/17/20**  
**Claimant: Appellant (2R)**

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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, Jennifer K. Pritchett, filed an appeal from the December 10, 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 February 19, 2021. The hearing was held with Appeals 21A-UI-01530-JC-T. The claimant participated. The employer participated through Emily Martin.

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: Claimant established a claim for benefits with an effective date of May 17, 2020. Claimant has made weekly claims each week and has worked only one assignment, from September 29, 2020 through October 2, 2020.

The issue of the claimant’s separation after October 2, 2020 from the employer under Iowa Code 96.5(1)J has not yet been adjudicated at the claims level.

Claimant has been otherwise able and available for work each week.

**REASONING AND CONCLUSIONS OF LAW:**

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 96.7(2)a(2)(a), (b), and (c) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the 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. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

(b) An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(c) The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

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".

For an individual to be eligible to receive benefits, he 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. 871 IAC 24.22; *Davoren v. Iowa Employment Sec. Comm'n*, 277 N.W.2d 602, 603 (Iowa 1979). To be found able to work, "[a]n individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); 871 IAC 24.22(1).

Claimant has been totally unemployed each week since establishing her claim for benefits, with the exception of September 29-October 2, 2020, when she worked for the employer. Claimant established she is able to and available for work. Benefits are allowed, provided she is otherwise eligible.

The issue of the claimant's separation after October 2, 2020 from the employer under Iowa Code 96.5(1)J is remanded to the Benefits Bureau for an initial investigation and decision.

**DECISION:**

The unemployment insurance decision dated December 10, 2020, (reference 01) is reversed. The claimant is able and available for work effective May 17, 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.

**REMAND:**

The issue of the claimant's separation after October 2, 2020 from the employer under Iowa Code 96.5(1)J is remanded to the Benefits Bureau for an initial investigation and decision.



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Jennifer L. Beckman  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
Iowa Workforce Development  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax 515-478-3528

March 1, 2021 \_\_\_\_\_  
Decision Dated and Mailed

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