

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MICHELLE R OLSEN**  
Claimant

**CENTRAL IOWA HOSPITAL  
CORPORATION**  
Employer

**APPEAL 20A-UI-07260-CL-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/15/20**  
**Claimant: Appellant (1)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment  
Iowa Admin. Code r. 871-24.22(2)i(3) – Benefit Eligibility - On-call Wage Credits

**STATEMENT OF THE CASE:**

On June 28, 2020, the employer filed an appeal from the June 26, 2020, (reference 01) unemployment insurance decision that denied unemployment insurance benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 6, 2020. Claimant participated. Employer did not register for the hearing and did not participate.

**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 claimant an on-call worker?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer in 2017. Claimant worked for employer as a nurse in the laser eye center on a PRN basis for the past two years.

In March 2020, the United States declared a public health emergency because of the COVID 19 pandemic.

Claimant's last day of work was March 13, 2020. On March 15, 2020, employer informed claimant it was suspending surgeries, but it had alternate work available. Unfortunately, claimant could not complete the work because she needed to care for her school aged children after in person classes were cancelled for the school year.

Employer did not have work available from April 26, 2020, until May 23, 2020. Employer had work available after that, and claimant was able to pick up some hours. Claimant was not able to work to the degree she normally could because of childcare needs.

**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 96.4(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.

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. Claimant is not eligible for regular unemployment insurance benefits during the weeks employer did not have work available.

During the weeks where claimant did not work and employer did have work available, it was because claimant had to care for children due to school cancellation. In that case, claimant was not able to or available for work and therefore not eligible for regular state unemployment insurance benefits.

Even though claimant is not eligible for regular unemployment insurance benefits under state law, 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. Claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

**DECISION:**

The June 26, 2020, (reference 01) unemployment insurance decision is affirmed. The claimant is not considered unemployed under Iowa law or able to and available for work. Regular unemployment insurance benefits funded by the state of Iowa are denied. Claimant may be eligible for federally-funded benefits called "PUA" as noted in the instructions below.



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Christine A. Louis  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515)478-3528

August 11, 2020  
Decision Dated and Mailed

cal/mh

*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). **If you are not allowed PUA benefits, the agency may find that you have been overpaid regular, unemployment insurance benefits and you may be required to repay those benefits.** Additional information on PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.