

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ANGELIA HILLIARD**

Claimant

**APPEAL 22A-UCFE-00013-AW-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**US POSTAL SERVICE**

Employer

**OC: 03/21/21**

**Claimant: Appellant (4)**

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Iowa Code § 96.1A(37) – Definitions – Total, partial unemployment

Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search

Iowa Code § 96.7(2)A(2) – Charges – Same base period employment

Iowa Admin. Code r. 871-24.23(26) – Eligibility – A&A – Part-time same hours, wages

**STATEMENT OF THE CASE:**

Claimant filed an appeal from the February 4, 2022 (reference 04) unemployment insurance decision that denied benefits effective March 21, 2021 finding claimant was still employed for the same hours and wages. The parties were properly notified of the hearing. A telephone hearing was scheduled for March 28, 2022. Claimant participated. Employer participated through Carlisa Brice, Labor Relations Specialist. Claimant introduced an exhibit consisting of 39 pages. Employer had not received the proposed exhibit. The hearing was continued so claimant's exhibit could be sent to employer.

The hearing was rescheduled for April 14, 2022. The parties were properly notified of the hearing. Claimant participated. Employer did not participate. Claimant's Exhibit 1 (pages 1 – 39) was admitted. Official notice was taken of the administrative record.

**ISSUES:**

Whether claimant is totally, partially or temporarily unemployed.

Whether claimant is able to and available for work.

Whether claimant is still employed at the same hours and wages.

Whether employer's account is subject to charge.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant began employment with United States Postal Service on May 23, 2013. Claimant is currently employed as a full-time Mail Handler working 40 hours per week; claimant's schedule is Thursday through Monday from 7:00 a.m. until 3:30 p.m.

On November 19, 2019, claimant sustained an injury at work. A physician restricted claimant from lifting over 10 pounds and lifting above her shoulders. Effective July 8, 2020, employer did

not have work available for claimant within her restrictions. On July 29, 2021, employer recalled claimant to work. Employer had work for claimant driving a forklift, which was within her restrictions. Claimant declined to drive the forklift stating that it hurt her neck. Employer directed claimant to produce a new note from her physician adding driving the forklift to claimant's restrictions.

On July 29, 2021, claimant's physician released claimant to return to work effective July 30, 2021 with her previous restrictions. (Exhibit 1, p. 3) The physician did not restrict claimant from driving the forklift. (Exhibit 1, p. 3) On August 5, 2021, claimant requested a primary care physician add driving the forklift to her restrictions. (Exhibit 1, p. 22) The physician declined. (Exhibit 1, p. 22) On October 12, 2021, a physician released claimant to return to work effective October 13, 2021 and restricted claimant from driving a forklift and turning her head from side to side. (Exhibit 1, p. 3)

Claimant filed an initial claim for unemployment insurance benefits effective March 21, 2021 and ongoing weekly claims from March 21, 2021 to October 30, 2021.

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

For the reasons that follow, the administrative law judge concludes:

Iowa Code section 96.1A(37) 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 37, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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. 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.

Iowa Code section 96.7(2)a(2) 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.

It is the duty of the administrative law judge, as the trier of fact, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other evidence you believe; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The findings of fact show how I have resolved the disputed factual issues in this case. I assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using my own common sense and experience. I find claimant's testimony that she was restricted from driving a forklift before October 13, 2021 to lack credibility. Claimant provided a note that she received from an advanced registered nurse practitioner in the emergency room on August 5, 2021 that restricted claimant from driving a forklift. (Exhibit 1, p. 13) Claimant obtained this note after a primary care physician denied her request to add forklift driving to her restrictions earlier that same day. (Exhibit 1, p. 22) When the physician declined to add the restriction, claimant told the physician that she would go to the emergency room to obtain the restriction. (Exhibit 1, p. 22) The physician told claimant that was not an appropriate use of the emergency room. (Exhibit 1, p. 22)

From March 21, 2021 until October 30, 2021, claimant performed no work and received no wages; claimant was totally unemployed. Because claimant was totally unemployed, she is required to be able to and available for work. Claimant has the burden of proving that she was able to and available for work.

Claimant sustained a work-related injury. Effective March 21, 2021, claimant's restrictions were not lifting more than 10 pounds and no overhead lifting. From March 21, 2021 until July 28, 2021, employer did not have work available for claimant within those restrictions. Claimant was able to and available for work within her restrictions. Accordingly, benefits are allowed from March 21, 2021 until July 31, 2021, provided claimant is otherwise eligible.

From July 29, 2021 until October 12, 2021, employer had work available for claimant driving a forklift, which was within her current restrictions of not lifting more than 10 pounds and no overhead lifting. Claimant's restrictions did not include driving a forklift until October 13, 2021. Claimant refused to drive the forklift. Claimant has not established that she was able to and available for work. Accordingly, benefits are denied from August 1, 2021 until October 9, 2021.

Effective October 13, 2021, claimant restrictions included not driving a forklift. Employer did not have work available for claimant within her restrictions. Claimant was able to and available for work within her restrictions. Accordingly, benefits are allowed effective October 10, 2021, provided claimant is otherwise eligible.

**DECISION:**

The February 4, 2022 (reference 04) unemployment insurance decision is modified in favor of appellant. Claimant was totally unemployed. From March 21, 2021 until July 31, 2021 and effective October 10, 2021, claimant was able to and available for work within her restrictions; benefits are allowed provided claimant is otherwise eligible. From August 1, 2021 through October 9, 2021, claimant was not able to and available for work within her restrictions; benefits are denied.



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April 28, 2022  
Decision Dated and Mailed

acw/ACW