

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**LAURIE L ALLEN**  
Claimant

**APPEAL 22R-UI-05470-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**UP PROPERTIES II LLC**  
Employer

**OC: 04/05/20**  
**Claimant: Respondent (2-R)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions  
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment  
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

**STATEMENT OF THE CASE:**

On October 1, 2021, UP Properties II, LLC (employer) filed an appeal from the September 22, 2021, reference 04, unemployment insurance decision that allowed benefits effective April 5, 2020, based upon the determination Laurie L. Allen (claimant) was partially unemployed. After due notice was issued, a telephone hearing was held on December 2, 2021. The employer participated; however, the claimant did not.

On December 9, 2021, Administrative Law Judge (ALJ) Andrew Duffelmeyer issued a decision denying benefits because the claimant was not able to and available for work. The claimant appealed that decision to the Employment Appeal Board (EAB). The EAB remanded the appeal for a new hearing, stating that ALJ Duffelmeyer's decision was not vacated unless a new decision was issued pursuant to the remand.

After due notice was issued, a telephone hearing was held on April 11, 2022. The claimant participated personally. The employer participated through Alan Burkett, General Manager, and was represented by Audryey Harley, from National Employers Council. No exhibits were admitted into the record. The administrative law judge took official notice of the administrative record, including the claimant's wage and claim histories.

**ISSUES:**

Is the claimant totally, partially, or temporarily unemployed effective April 5, 2020?  
Was the claimant able to work, available for work, and actively and earnestly seeking 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 June 3, 2019, as a part-time Crew Member working the day shift. She was not guaranteed any hours, but averaged 25 hours per week, earning \$10.50 an hour. On June 18, 2020, the claimant's pay was raised to \$10.65.

In March 2020, the global pandemic started to affect business in Iowa. The employer closed the dining room and began closing the business at 7:30 p.m. However, that did not affect the claimant's hours and she continued to work her normal schedule until the week ending October 3, 2020, when her employment ended.

The claimant filed for unemployment insurance benefits effective April 5, 2020, and her weekly benefit amount is \$195.00. While filing her weekly claims, the claimant reported wages earned for the weeks between April 5 and May 2. She reported wages earned less than \$210.00 for three of the four weeks. She did not report any wages earned from May 3 through May 23, even though she worked during that time. She reported wages earned of varying amounts from May 24 through August 1, and August 9 through October 3. Many of the weeks she reported less than \$210.00 in gross wages earned. The claimant reported a total of \$3,391.00 in wages earned while filing for benefits from April 5 through October 3, 2020. The employer reported paying the claimant \$4,643.00 in total gross wages for the second, third, and fourth quarters of 2020. Whether the claimant accurately reported wages earned and should be subject to a penalty for misrepresentation has not been investigated by the Integrity Bureau.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was not partially or totally unemployed. The issues of availability for work and the chargeability of the employer's account are moot at this time. Benefits are denied.

Iowa Code § 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(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.

Under Iowa Employment Security Law, an individual must be totally or partially unemployed to be eligible for benefits. Iowa Code § 96.19(38). Total unemployment is when someone has received no wages and performed no services during any given week. *Id.* In this case, the claimant has performed services and earned wages for each week she has claimed benefits. She is not totally unemployed.

The next question is whether she is partially unemployed. 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 averaging 25 hours per week. Her hours have stayed the same throughout the pandemic. 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.

As the claimant is not partially unemployed and has not had any weeks of total unemployment, the issues of her availability for work and the chargeability of the employer's account are moot at this time.

Whether the claimant failed to properly report wages earned from April 5 through October 3, 2020, and is subject to a penalty for misrepresentation is remanded to the Investigations & Recovery Unit of the Integrity Bureau.

**DECISION:**

The September 22, 2021, reference 04, unemployment insurance decision is reversed. The claimant is not partially unemployed, and benefits are denied. The issues of availability for work and the chargeability of the employer's account are moot, at this time.

Per the EAB remand, the decision issued by ALJ Duffelmeyer on December 9, 2021, is vacated because of this decision.

**REMAND:**

Whether the claimant failed to properly report wages earned from April 5 through October 3, 2020, and is subject to a penalty for misrepresentation is remanded to the Investigations & Recovery Unit of the Integrity Bureau.



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Stephanie R. Callahan  
Administrative Law Judge

June 21, 2022  
Decision Dated and Mailed

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