

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**KELLY J GERBER**

Claimant

**APPEAL NO. 20A-UI-15427-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FAMILIES FIRST COUNSELING SERVICES**

Employer

**OC: 04/05/20**

**Claimant: Respondent (1R)**

Iowa Admin. Code r. 871-24.23(26) – Part-Time Worker – Same Wages and Hours

Iowa Code § 96.4-3 – Able and Available

Iowa Code § 96.7(2)A(2) – Partial Benefits

Iowa Code § 96.1(A)(37) – Total and Partial Unemployment

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

Federal Law PL 116-136 Sec. 2104 – Eligibility for Federal Pandemic Unemployment Compensation

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated November 16, 2020, reference 02, which held claimant able and available for work. After due notice, a hearing was scheduled for and held on January 25, 2020. Claimant participated personally. Employer participated by Barbara Rundle and Nicole Winther. Claimant failed to respond to the hearing notice and did not participate.

**ISSUES:**

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

Whether claimant is eligible to receive partial benefits?

Whether claimant is able and available for work?

Whether claimant has been overpaid state unemployment benefits?

Whether claimant is eligible to receive Federal Pandemic Unemployment Compensation?

**FINDINGS OF FACT:**

The claimant worked for Families First Counselling, a base period employer, full time under the same terms and conditions as contemplated in the original contract of hire. Claimant had a Covid exposure in late July that she reported to employer. Claimant requested to quarantine. Employer granted this request, and offered claimant the opportunity to work her job telephonically. Claimant demurred. Claimant was off from working her regular hours July 17

through July 27, 2020 she worked abbreviated hours during those periods both as a result of quarantining and the derecho that struck the Cedar Rapids area. She applied for and received benefits for those periods. Employer stated that claimant earned substantial wages for weeks when she claimed little or no wages.

Claimant received state unemployment benefits during the two week period where she had reduced or eliminated hours in this matter of \$963.00.

Claimant received Federal Pandemic Unemployment Compensation benefits during the two week period where she had reduced or eliminated hours in this matter of \$600.00.

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

For the reasons that follow, the administrative law judge concludes the claimant was partially unemployed for the weeks ending July 25 through the week ending August 1, 2020.

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 96.19, 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 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.

The claimant is considered partially unemployed as claimant's inability to earn wages during this two week period were brought about as a result of the derecho that struck the Cedar Rapids area. Benefits are allowed for the weeks ending July 25, 2020 and August 1, 2020.

Claimant has received state unemployment benefits in this matter of \$963.00. To the extent that claimant has accurately recorded pay, said amount is not an overpayment.

Claimant has received Federal Pandemic Unemployment Compensation benefits in this matter of \$600.00. To the extent that claimant has accurately recorded pay, said amount is not an overpayment.

**DECISION:**

The November 16, 2020, reference 02, decision is affirmed. The claimant is partially unemployed and benefits are allowed, provided claimant is otherwise eligible.

This matter is remanded to the benefits bureau for determination as to whether claimant has accurately reported wages earned for the weeks ending July 25, 2020 and August 1, 2020.



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Blair A. Bennett  
Administrative Law Judge

February 10, 2021  
Decision Dated and Mailed

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