

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

KALIKA S STAKER
Claimant

APPEAL NO: 20A-UI-02941-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MILLENNIUM REHAB & CONSULTING
Employer

OC: 03/15/20
Claimant: Respondent (4)

Section 96.4-3 – Able and Available for Work
Section 96.4-3 – Same Hours and Wages

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 8, 2020, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 6, 2020. The claimant did not respond to the hearing notice and did not participate in the hearing. Grant Pearson, Human Resources Assistant, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant is still employed with the employer for the same hours and wages as contemplated in the original contract of hire.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant is employed as a part-time physical therapy assistant. He averaged between 20 and 29 hours per week until the Coronavirus hit at which time his hours were decreased. The week of March 15, 2020, he worked 16 hours; the week of March 22, 2020, he worked 9.25 hours; the week of March 29, 2020, he worked 17.75 hours; the week of April 5, 2020, he worked 12.50 hours; the week of April 12, 2020, he worked 8:00 hours; and the week of April 19, 2020, he worked 25.33 hours. The claimant's hours returned to normal the week of April 19, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not employed at the same hours and wages as contemplated in the original contract of hire but is eligible for benefits for the five weeks ending April 18, 2020. The employer's account shall not be charged for benefits as the claimant's underemployment was due to the Coronavirus.

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 Admin. Code r. 871-24.23(26) provides:

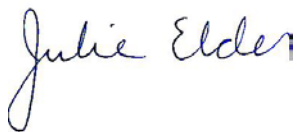
Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(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.

The claimant was hired as a part-time physical therapy assistant. There has been no separation from his part-time employment and the claimant is not currently working for this employer at the same hours and wages as contemplated in the original contract of hire. The claimant is allowed partial benefits for the five weeks ending April 18, 2020. Those benefits are attributable to the Coronavirus and as such shall be charged to the unemployment insurance compensation fund for COVID 19, provided the claimant is otherwise eligible.

DECISION:

The April 8, 2020, reference 01, decision is modified in favor of the appellant. The claimant was not employed at the same hours and wages as in his original contract of hire for the five weeks ending April 18, 2020, due to COVID 19. The employer's account is not subject to charge.



Julie Elder
Administrative Law Judge

May 15, 2020
Decision Dated and Mailed

je/scn