

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**KATELYN R FRIESNER  
1008 N 9TH ST  
ESTHERVILLE IA 51334-1315**

**TRI-STATE NURSING ENTERPRISES INC  
BRIDGET HOEFLING  
3100 S LAKEPORT ST  
SIOUX CITY IA 51106**

**APPEAL NO. 20A-UI-13420-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**APPEAL RIGHTS:**

**This Decision Shall Become Final**, unless within fifteen (15) days from the mailing date below the administrative law judge's signature on the last page of the decision, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to:

***Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
OR  
Fax Number: (515)281-7191***

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

**AN APPEAL TO THE BOARD SHALL STATE CLEARLY:**

The name, address and social security number of the claimant.

A reference to the decision from which the appeal is taken.

That an appeal from such decision is being made and such appeal is signed.

The grounds upon which such appeal is based.

**YOU MAY REPRESENT** yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

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**ONLINE RESOURCES:**

UI Appeals: <http://www.iowaworkforce.org/ui/appeals/index.html>

National Career Readiness Certificate through the Skilled Iowa Initiative: <http://skillediowa.org/>

Becoming a member employer through Skilled Iowa and utilizing internships: <http://skillediowa.org/>

Facts About Unemployment Handbook: <http://www.iowaworkforce.org/ui/handbook.htm>

Employer account access and information: <https://www.myiowaui.org/UITIPTaxWeb/>

<http://www.iowaworkforce.org/ui/uiemployers.htm>

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KATELYN R FRIESNER**  
Claimant

**APPEAL NO. 20A-UI-13420-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TRI-STATE NURSING ENTERPRISES INC**  
Employer

**OC: 04/12/20  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated October 21, 2020, reference 02, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on December 23, 2020. Claimant participated personally. Employer participated by Holly Kutz. Claimant's Exhibits A was admitted into evidence.

**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?

**FINDINGS OF FACT:**

The claimant currently works for Tri-State Nursing, a base period employer, part time under the same terms and conditions as contemplated in the original contract of hire. After claimant filed for benefits, she started refusing a number of assignments and cancelling assignments she'd agreed to take.

Claimant stated that the reason she refused these assignments was Covid related. When claimant cancelled assignments she never mentioned Covid as a reason for refusal. Claimant testified that she didn't take assignments because she was with a child, and was concerned about getting Covid. Claimant then stated she went back to work once she could no longer survive on unemployment benefits.

Throughout the time claimant was not working, there was ongoing work available for her.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not partially unemployed. The claimant was not able and available for work during the times she filed for unemployment.

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.

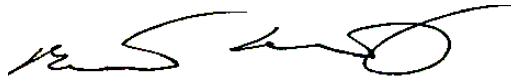
Because the claimant was not willing to work when hours were available to her, claimant is not able and available for work. Benefits are denied.

*Note to Claimant.* 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. **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.

**DECISION:**

The October 21, 2020, reference 02, decision is affirmed. The claimant is not partially unemployed and was not able and available for work. Benefits are denied.



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Blair A. Bennett  
Administrative Law Judge

January 11, 2021  
Decision Dated and Mailed

bab/scn