

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AMY D BERGER
Claimant

AMERICLEAN OF IOWA LLC
Employer

APPEAL 20A-UI-09236-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/22/20
Claimant: Respondent (4R)

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.19(38)B – Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Part time, same hours and wages

STATEMENT OF THE CASE:

The employer/appellant filed an appeal from the July 23, 2020 (reference 01) unemployment insurance decision that found claimant was eligible for unemployment benefits due to her working reduced hours. The parties were properly notified of the hearing. A telephone hearing was held on September 21, 2020. The claimant, Amy D. Berger, participated personally. The employer, Americlean of Iowa LLC, participated through witnesses Carly Wehmeyer and Christine Wehmeyer. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUES:

Is the claimant eligible for total or partial unemployment benefits?
Is claimant employed for the same hours and wages?
Is the claimant able to and available for work?
Is the employer's account subject to charges?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for this employer on July 14, 2016. She worked as a full-time office manager. Her normal working hours were Monday through Friday each week from 7:30 a.m. to 4:30 p.m. Caryl Wehmeyer was her direct supervisor.

Effective March 23, 2020 through April 13, 2020, the claimant's hours of employment were reduced from her normal full-time shifts. Claimant earned \$18.25 per hour. Hours were reduced due to lack of work because of the COVID 19 pandemic.

From March 22, 2020 through March 28, 2020 the claimant worked 8.72 hours. From March 29, 2020 through April 4, 2020 the claimant worked 16.01 hours. From April 5, 2020 through April 11, 2020 the claimant worked 23.32 hours. From April 12, 2020 through April 18, 2020 the claimant worked 39.21 hours. From April 19, 2020 through April 25, 2020 the claimant worked 35.56 hours. From April 26, 2020 through May 2, 2020 the claimant worked 38.08 hours.

As of May 4, 2020 the claimant was instructed by her doctor to be off of work due to potential exposure to the Coronavirus. Telework was not an option for the claimant. Claimant presented the employer with a doctor's note to be off of work from May 4, 2020 through May 17, 2020 and she did not work during that time period. Claimant's last day physically worked on the job was on May 19, 2020 when she worked 6.83 hours. As of May 26, 2020, the claimant permanently separated from employment with this employer.

Claimant's administrative records establish that she has received unemployment insurance benefits and Federal Pandemic Unemployment Compensation benefits since filing her original claim for benefits. The permanent separation issue has not yet been adjudicated by the Benefits Bureau of Iowa Workforce Development.

Claimant started working full-time with another employer effective July 6, 2020. No weekly-continued claims for benefits were filed after benefit week-ending July 4, 2020.

REASONING AND CONCLUSIONS OF LAW:

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

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", subparagraph (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)b provides:

As used in this chapter, unless the context clearly requires otherwise:

38. "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 § 96.7(2)a(2)a provides:

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.

(emphasis added).

Iowa Admin. Code r. 871-24.23(35) provides:

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

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

Iowa Admin. Code r. 871-24.23(23) provides:

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

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

The claimant's normal full-time hours were reduced from March 22, 2020 through benefit week-ending April 11, 2020. After that her normal full-time hours resumed. From April 12, 2020 through benefit week-ending May 2, 2020, the claimant worked full-time. Effective benefit week beginning May 3, 2020 through July 4, 2020 the claimant was off of work due to her doctor advising her to do so because she was unable to telework.

So long as the wages earned are less than her weekly benefit amount, plus fifteen dollars, claimant may be eligible for partial benefits from March 22, 2020 through April 11, 2020 and the employer's account may be charged for benefits paid during this period. However, effective April 12, 2020, the claimant was either working to such a degree that removed her from the labor market each week, or, was off of work on her own accord pursuant to her doctor's orders. In either event, she has not established that she was able to and available for work effective

April 12, 2020. Benefits are denied effective April 12, 2020 and continuing until the claimant establishes that she is able to and available for work.

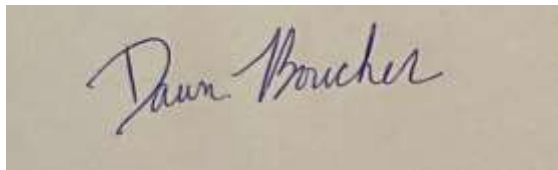
DECISION:

The July 23, 2020 (reference 01) decision is modified in favor of the appellant. Claimant was partially unemployed from March 22, 2020 through April 11, 2020 and benefits are allowed for that period of time, provided the claimant is otherwise eligible. Effective April 12, 2020, the claimant was not able to and available for work. Benefits are denied effective April 12, 2020 due to the claimant not being able to and available for work.

REMAND:

The matter of the claimant's overpayment of regular unemployment insurance benefits funded by the State of Iowa and overpayment of FPUC benefits is remanded to the Benefits Bureau for an initial investigation and determination. The chargeability issue of whether charges are made against the employer from March 22, 2020 through April 11, 2020 due to the COVID 19 pandemic is remanded to the Tax Bureau of Iowa Workforce Development for a determination of the allocation of charges. The permanent separation issue is remanded to the Benefits Bureau for an initial investigation and determination.

This decision denies unemployment insurance benefits funded by the State of Iowa. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits. See Note to Claimant below.



Dawn Boucher
Administrative Law Judge

September 23, 2020
Decision Dated and Mailed

db/sam

Note to Claimant

- This decision determines you are not eligible for regular unemployment insurance benefits funded by the State of Iowa under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits funded by the State of Iowa under state law, you may qualify for benefits under the Federal Pandemic Unemployment Assistance ("PUA") section of the Coronavirus Aid, Relief, and Economic

Security Act (“Cares Act”) that discusses eligibility for claimants who are unemployed due to the Coronavirus.

- **You will need to apply for PUA to determine your eligibility under the program.**

For additional information on how to apply for PUA go to:

<https://www.iowaworkforcedevelopment.gov/pua-information>.

- If you are denied regular unemployment insurance benefits funded by the State of Iowa and wish to apply for PUA, please visit:

<https://www.iowaworkforcedevelopment.gov/pua-information> and scroll down to “Submit Proof Here.” You will fill out the questionnaire regarding the reason you are not working and upload a picture or copy of your fact-finding decision. Your claim will be reviewed for PUA eligibility. If you are eligible for PUA, you will also be eligible for Federal Pandemic Unemployment Compensation (FPUC) until the program expires. Back payments PUA benefits may automatically be used to repay any overpayment of state benefits. If this does not occur on your claim, you may repay any overpayment by visiting:

<https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment-and-recovery>.

- If you have applied and have been approved for PUA benefits, this decision will **not** negatively affect your entitlement to PUA benefits.