

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANNA M HERNANDEZ

Claimant

APPEAL 20A-UI-05753-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

GRAPETREE MEDICAL STAFFING INC

Employer

OC: 03/15/20

Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Availability Disqualifications
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview
PL 116-136, Sec. 2104(b) – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

On June 11, 2020, the claimant filed an appeal from the June 3, 2020, (reference 01) unemployment insurance decision that denied benefits based on claimant's availability for work. The parties were properly notified about the hearing. A telephone hearing was held on July 13, 2020. Claimant participated. Employer participated through human resources specialist Zachary Myer. Employer's Exhibit 1 was received. Claimant's Exhibit A was received.

ISSUES:

Is the claimant totally, partially, or temporarily unemployed?
Is the claimant able to and available for work?
Is the claimant still employed at the same hours and wages?
Is the employer's account subject to charge?
Was the claimant overpaid unemployment insurance benefits?
Is the claimant eligible for Federal Pandemic Unemployment Compensation?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant has worked for employer since February 28, 2017. Claimant works for employer as an on-call CNA.

Claimant's last day of work was March 20, 2020. Employer has had shifts available since that time, but claimant has not picked up any shifts up, as she lives with three family members who have underlying health conditions and her daughter also recently had RSV. Claimant did not want to expose her family members to COVID 19. In addition, claimant's five children were out of school due to cancellation of in person classes. Claimant was needed to provide childcare.

Claimant has received regular unemployment insurance benefits and Federal Pandemic Unemployment Compensation since filing this claim.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not eligible for regular unemployment insurance benefits effective March 15, 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 96.1A, 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. 871-24.22(2)i(3) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market...

i. On-call workers.

(3) An individual whose wage credits earned in the base period of the claim consist exclusively of wage credits by performing on-call work, such as a banquet worker, railway worker, substitute school teacher or any other individual whose work is solely on-call work during the base period, is not considered an unemployed individual within the meaning of Iowa Code section 96.19(38)"a" and "b." An individual who is willing to accept only on-call work is not considered to be available for work.

Claimant is not considered to be unemployed within the meaning of the law, as she was hired to work on PRN status and the wage credits in her base period are related to "on-call" work. When an individual agrees to work "on-call" the implied agreement is that they will only work when work is available and that work will not be regularly available. Thus, any diminution in hours is directly related to the sporadic availability of available work, as no regular hours are guaranteed. Therefore, claimant is not considered unemployed as defined by chapter 96 of the Iowa Code and is not eligible for regular unemployment insurance benefits.

In this case, hours were available. However, claimant was not available to work. Therefore, claimant is not considered able to and available for work and is not eligible for regular unemployment insurance benefits.

The administrative law judge will not address the issue of whether claimant has been overpaid benefits, as the claimant may be eligible for Federal Pandemic Unemployment Compensation, and in that case, no overpayment decision would be necessary.

DECISION:

The June 3, 2020, (reference 01) unemployment insurance decision is affirmed. The claimant is not considered unemployed effective March 15, 2020. Regular benefits are denied. Claimant may be eligible for PUA benefits, as described in the paragraph below.



Christine A. Louis
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

July 23, 2020

Decision Dated and Mailed

cal/sam

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits 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 under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA, you may be required to repay the benefits you've received so far.**