EMILY STAFFORD Claimant	**APPEAL 20A-UI-05424-S1-T** **ADMINISTRATIVE LAW JUDGE** **DECISION**
BOONE COUNTY HOSPITAL Employer	
	OC: 03/15/20 **Claimant: Appellant (2)**

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.4(3) – Able and Available
871 IAC 24.24.23(26) – Same Hours and Wages – Still Employed
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
871 IAC 24.22(2)f – Part-Time Worker – Able and Available
Iowa Code § 96.3-7 – Overpayment
PL 116-136 Section 2104 (B) – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

Emily Stafford (claimant) appealed a representative's May 28, 2020, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits because she was still employed with Boone County Hospital (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 20, 2020. The claimant participated personally. The employer participated by Kim Schwartz, Assistant Administrator of Human Resources, and Laura Krieger, Assistant Administrator of Nursing. The administrative law judge took official notice of the administrative file.

ISSUE:

The issue is whether the claimant is available for work, whether the claimant was overpaid benefits, and whether the claimant is eligible for Federal Pandemic Unemployment Compensation.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on May 2, 2016, as a full-time cardiac rehabilitation technician. In February 2020, the claimant went to part-time hours because she became a full-time student. She was guaranteed twenty-four to thirty hours per week.

From March 23, 2020, through May 29, 2020, the claimant's unit was shut down. There was no work available for her. The employer told her that if she wanted work, she would have to become pro re nata (PRN) or as needed. The claimant signed the document in March 2020. For more than nine weeks, the employer had no work for the claimant. When the unit reopened, the employer put the claimant back to work as needed. The claimant was available for work

during the shutdown. She was paid no wages from the employer or her other employer, Des Moines Area Community College.

The claimant filed her claim for unemployment insurance benefits with an effective date of March 15, 2020. She filed benefits for the four-week period ending April 18, 2020, and misunderstood about reporting income. The claimant may have over-reported wages received. For the five-week period ending April 18, 2020, the claimant received $450.00 in unemployment insurance benefits. She also received $1,800.00 in Federal Pandemic Unemployment Compensation for the three-week period ending April 18, 2020. Her base period wages from this employer were full-time wages.

REASONING AND CONCLUSIONS OF LAW:

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.

In order to receive regular unemployment insurance benefits under Chapter 96 of the Iowa Code, a totally unemployed claimant must establish he or she is able to and available for work. Iowa Code § 96.4(3). In this case, the claimant is totally unemployed. So the issue is whether she was able to and available for work.

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:
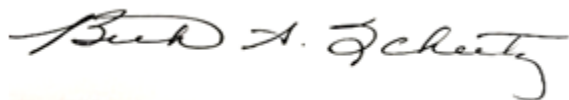
> 3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (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".

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). The employer reduced the claimant's status and then shut the unit down. The claimant was able and available for work as of March 15, 2020. The employer had no work available. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's May 28, 2020, decision (reference 01) is reversed. The claimant was able and available for work as of March 15, 2020. Benefits are allowed, provided the claimant is otherwise eligible.

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Beth A. Scheetz
Administrative Law Judge

July 28, 2020_____
Decision Dated and Mailed

bas/sam