

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JAMIE P HAUBER
Claimant

ACCURA HEALTHCARE OF CRESCO LLC
Employer

APPEAL NO. 20A-UI-06499-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/26/20
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 § 96.19(38) – Total and Partial Unemployment

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated June 16, 2020, reference 01, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on July 24, 2020. Claimant participated personally. Employer participated by Michelle Danner. Employer's exhibit 1 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 Accura Healthcare, a base period employer, part time under the same terms and conditions as contemplated in the original contract of hire. Claimant additionally has her own hair salon for which she is not paid wages and does not contribute to the unemployment system.

In February 2000 claimant received time off from work as she has carpal tunnel surgery on her wrist. This was not a work-related injury. Claimant received a note from her doctor on February 24, 2020 that she could return to work with no lifting or pushing. Employer had no work that fit those restrictions. Claimant was given some decreased hours on March 11 as employer had the manager help claimant with her duties.

Claimant received another doctor's note on May 20 that restricted her lifting to 5 pounds. Employer still could not give claimant her regular hours with this restriction.

Claimant has been a part time employee throughout her employment, working hours that varied week-to-week. These varied hours have continued since claimant filed her claim in this matter.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not partially unemployed.

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.

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.

Claimant in this matter is continuing to work hours that she can. Any reduction in claimant's part time work hours are attributable to claimant's carpal tunnel injury and more recently to her injured ankle. 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. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed. **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 June 16, 2020, reference 01, decision is affirmed. The claimant is not partially unemployed and benefits are denied.



Blair A. Bennett
Administrative Law Judge

July 31, 2020
Decision Dated and Mailed

bab/mh