

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MARCIE N CLELAND**  
Claimant

**CITY OF AMES**  
Employer

**APPEAL 21A-UI-05394-DZ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/31/20**  
**Claimant: Appellant (1)**

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Iowa Code § 96.19(38) – Total and Partial Unemployment  
Iowa Code §96.4(3) – Able to and Available for Work  
Iowa Admin. Code r. 871-24.23(26) – Same Hours and Wages  
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

**STATEMENT OF THE CASE:**

Marcie N Cleland., the claimant/appellant, filed an appeal from the February 2, 2021, (reference 02) unemployment insurance decision that denied benefits as of November 29, 2020. The parties were properly notified about the hearing. A telephone hearing was held on April 22, 2021. Ms. Cleland participated and testified. The employer participated through Krista Hammer, human resources officer II and Chris Crippen, assistant transit director of operations. Official notice was taken of the administrative record.

**ISSUES:**

Is Ms. Cleland totally, partially or temporarily unemployed?  
Is Ms. Cleland able to and available for work?  
Is Ms. Cleland still employed at the same hours and wages?  
Is the employer's account subject to charge?

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: Ms. Cleland began working for the employer, a base period employer, on February 3, 2016. She works as a 3/4 part-time transit driver. She is guaranteed 30 hours per week. She is paid \$19.72 per hour.

The employer provides bus service to the Iowa State University community. During the university's winter break, driving hours are reduced since there is less driving work available. However, drivers are able to do other tasks to get hours.

In March 2020, the United States declared a public health emergency because of the COVID-19 pandemic. Due to the pandemic, the university's winter break lasted longer than usual. The university's winter break was from November 26, 2020 through January 4, 2021.

In preparation for the longer winter break, Ms. Crippen put a memo in each of the driver's mailboxes, including Ms. Cleland's mailbox, on October 28 asking drivers to contact her by November 4 if they needed help getting hours during the upcoming extended university winter break. Drivers would be able to do other tasks to get hours. Ms. Cleland testified that she did not see the memo. Ms. Cleland did not respond to the memo.

As of November 29, 2020, Ms. Cleland had five guarantee hours per week and she could pick up available shifts. Ms. Cleland was not able to pick up enough shifts to get her to at least 30 hours per weeks. By the last week of January 2021, Ms. Cleland was working her usual hours of at least 30 hours per week again.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that Ms. Cleland is still employed with this employer at the same hours and wages as in her original contract of hire as of November 29, 2020.

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", 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 § 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.

Iowa Code section 96.7(2)a(2)(a) provides:

2. 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.

The decision in this case rests, at least in part, on the credibility of the witnesses. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The findings of fact show how the administrative law has resolved the disputed factual issues in this case. The administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using his own common sense and experience.

Ms. Cleland is still employed with the employer. As of November 29, 2020, the employer has continuously offered Ms. Cleland the same employment as contemplated at hire, that is, work as

a 3/4th part-time transit driver at the same hourly pay. The employer offered to help Ms. Cleland get hours during the extended winter break. Ms. Cleland did not take the employer up on its offer. Since Ms. Cleland is not totally, partially, or temporarily unemployed, REGULAR unemployment insurance benefits are denied as of November 29, 2020.

Even though Ms. Cleland is not eligible for REGULAR unemployment insurance benefits under state law as of November 29, 2020, 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 up to a \$600.00 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if the person is eligible.

**DECISION:**

The February 2, 2021, (reference 02) unemployment insurance decision is affirmed. As of November 29, 2020, Ms. Cleland is still employed for the same hours and wage as contemplated at hire. REGULAR unemployment insurance benefits are denied as of November 29, 2020. Ms. Cleland may be eligible for PUA benefits.



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Daniel Zeno  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
Iowa Workforce Development  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax 515-478-3528

April 28, 2021  
Decision Dated and Mailed

dz/kmj

**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/were unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA) benefits. **You must apply for PUA benefits 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.**