

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DORUNTINA SHATRI
Claimant

APPEAL 21A-UI-07844-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DES MOINES AREA COMM COLLEGE
Employer

OC: 04/05/20
Claimant: Appellant (2-R)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions
Iowa Admin. Code r. 871-24.23(26) – Available – Part-time Same Wages and Hours
Iowa Code § 96.19(38) – Total, Partial, and Temporary Unemployment
Iowa Code § 96.7(2)a(2) – Employer Chargeability

STATEMENT OF THE CASE:

On March 12, 2021, Doruntina Shatri (claimant) filed an appeal from the March 5, 2021, reference 01, unemployment insurance decision that denied benefits effective April 5, 2020, based upon the determination she was still employed in the same hours and wages as her contract of hire and was not able to and available for work. After due notice was issued, a telephone hearing was held on May 27, 2021. The claimant has moved back to Kosovo, and she did not answer when called at the number registered. However, the claimant's appeal letter was accepted as participation by written document. The employer participated through Kay Ruggiero, Director of Payroll. No exhibits were offered into the record.

ISSUES:

Is the claimant totally, partially, or temporarily unemployed?
Was the claimant able to work and available for work effective April 5, 2020?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began working for the employer part-time on September 20, 2019, as a Student Worker, which was funded by a grant from a non-profit organization in Kosovo. The claimant was guaranteed 20 hours of work each week earning \$9.50 an hour. In March 2020, due to the COVID-19 pandemic, the campus was closed to the claimant and all other non-essential employees. The employer only had 12 hours a week of remote work available to the claimant.

The claimant filed her claim for unemployment insurance benefits effective April 5 and the weekly benefit amount is \$244.00. The claimant worked each week from April 5 through November 7 earning \$114.00 in gross wages; however, she did not report any wages earned when filing from April 5 through August 22. She mistakenly believed that she was receiving a scholarship stipend rather than wages. The administrative record shows the employer paid unemployment insurance tax on the wages paid to the claimant.

Whether the claimant has unreported wages and has been overpaid unemployment insurance benefits from April 5 through August 22 has not yet been investigated by the Benefits Bureau.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was partially unemployed. Partial benefits are allowed effective April 5, 2020, provided she meets all other eligibility requirements.

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.

Under Iowa Employment Security Law, an individual must be unemployed to be eligible for benefits. Iowa Code § 96.19(38). In order to be partially unemployed, an individual must be laid off from full-time employment or working less than his or her regular full-time work week. *Id.* If an individual is employed in a part-time position working the same hours and wages as contemplated at hire, he or she cannot be considered partially unemployed. Iowa Admin. Code r. 871-24.23(26).

In this case, the claimant was hired into a part-time position with a guaranteed 20 hours of work each week. Due to the global pandemic, the claimant's regular hours were reduced to 12 per week and she earned \$114.00 in gross wages, which is less than \$259.00, her weekly benefit amount plus fifteen dollars. The claimant was partially unemployed and eligible for partial benefits effective April 5, 2020. Benefits are allowed, provided she is otherwise eligible.

Whether the claimant has unreported wages, as delineated in the findings of fact, and has been overpaid unemployment insurance benefits from April 5 through August 22 is remanded to the Benefits Bureau for review and processing.

DECISION:

The March 5, 2021, reference 01, unemployment insurance decision is reversed. The claimant was partially unemployed and considered able to work and available for work effective April 5, 2020. Partial benefits are allowed, provided she is otherwise eligible.

REMAND:

Whether the claimant has unreported wages, as delineated in the findings of fact, and has been overpaid unemployment insurance benefits from April 5 through August 22 is remanded to the Benefits Bureau for review and processing.



Stephanie R. Callahan
Administrative Law Judge

June 11, 2021
Decision Dated and Mailed

src/scn