

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SAMANTHA M GODBEY
Claimant

PRK WILLIAMS INC
Employer

APPEAL 21A-UI-09461-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/08/20
Claimant: Appellant (4R)

Iowa Code § 96.19(38) – Total, Partial, and Temporary Unemployment
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(26) – Employment at Same Hours and Wages
Iowa Code § 96.7(2)A(2) – Employer Contributions and Reimbursements

STATEMENT OF THE CASE:

On April 2, 2021, the claimant, Samantha M. Godbey filed an appeal from the March 19, 2021 (reference 02) unemployment insurance decision that denied benefits based upon a determination that claimant was still employed with this employer. The parties were properly notified of the hearing. A telephonic hearing was held at 9:00 a.m. on Friday, June 18, 2021. The claimant, Samantha M. Godbey, participated. The employer, PRK Williams, Inc., participated through Cyndi Leitheiser, HR Business Partner. Employer's Exhibits 1, 2, and 3 were received and admitted into the record over objection. The administrative law judge took official notice of the administrative record.

ISSUES:

Is claimant totally, partially, or temporarily unemployed?
Is claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for the employer as a full-time home health aide. She later moved to part-time PRN status. Claimant was a part-time PRN home health aide for the employer in November and December 2020.

Claimant worked no hours for the employer during the weeks ending December 5 and December 12, 2020. Claimant explained that her son's daycare was closed due to COVID-19, so she was unable to work that week. Claimant was also homeschooling her other children at that time.

During the weeks ending December 19 and December 26, 2020, and the week ending January 2, 2021, claimant performed services for the employer and received wages. Claimant reported wages each of these weeks when filing weekly continued claims for benefits.

Claimant continued filing claims throughout January 2021. For the four-week period ending January 30, 2021, claimant reported that she had not performed any services during any week and she had not earned any wages any week.

The employer had additional hours available for claimant to work. However, claimant had limited availability, and the employer could only schedule her during times when she indicated she was available for work. According to Leitheiser, the employer could have given claimant as many as 30 hours per week.

The employer provided a text message it sent to claimant on January 29, 2021. In this message, the employer asks claimant to let someone know when her son goes back to school and she is available for work again. Claimant did not respond to this message.

Claimant began new part-time employment with employer SH Home Care Services, L.L.C. in February 2021. She continued filing weekly claims for benefits while working for this employer.

Claimant's wage records reflect part-time work with the employer throughout her base period. Her quarterly wages range from \$2,960.00 in her lowest quarter to \$5,359.00 in her highest quarter. Claimant has no other wages in her base period.

Iowa Workforce Development issued both parties a decision dated March 19, 2021 (reference 02) that denied claimant benefits. Claimant did not receive this decision. The agency had an incorrect address on file for her, despite her attempts to correct it, and she was not receiving any communications regarding her claim. Claimant learned about the decision when she called the agency on April 2 to inquire why she had not received her benefits. Once she was notified about the decision, she immediately filed an online appeal.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was either not partially unemployed or was not available for work and therefore was not eligible for benefits.

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 Admin. Code r. 871-24.23(16) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

Under Iowa Employment Security Law, an individual must be totally or partially unemployed to be eligible for benefits. Iowa Code § 96.19(38). Total unemployment is when someone has received no wages and performed no services during any given week. *Id.* In this case, the claimant performed no services for the employer and reported no wages for the two-week period ending December 12, 2020, and for the four-week period ending January 30, 2021. She was totally unemployed for those six weeks. However, the administrative law judge finds that claimant was not available for work. Due to a combination of claimant's son being home from school and claimant homeschooling other children, claimant voluntarily limited her availability to such a degree that the employer could not assign work to her. The employer had ample work available for claimant, but through her own choices, she made herself unavailable to accept that work. Therefore, benefits are withheld for the weeks during which claimant was totally unemployed.

The next question is whether she is partially unemployed. 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). Here, the evidence in the record indicates claimant was a part-time employee. She has worked part-time hours during her base period of employment. Her hours have fluctuated as was the expectation accepted part-time work. As the claimant was working in a part-time job in the same hours and wages contemplated at hire, or agreed to shortly thereafter, the claimant is not partially unemployed and is not eligible for benefits for the weeks ending December 19, 2020; December 26, 2020; or January 2, 2021.

Based on the evidence in the record, it appears claimant accepted new employment in February 2021 with employer SH Home Care Services, L.L.C. This matter will be remanded for a determination of whether claimant is totally, partially, or temporarily unemployed with that employer.

DECISION:

The March 19, 2021 (reference 02) unemployment insurance decision is modified in favor of claimant/appellant. Claimant is ineligible for benefits for the nine-week period ending January 30, 2021, as she was either not partially unemployed or not available for work. Benefits are withheld for these nine weeks.

REMAND:

The issue of whether claimant is totally, partially, or temporarily unemployed effective January 31, 2021, with reference to employer SH Home Care Services, L.C., is remanded to the Benefits Bureau for initial determination.



Elizabeth A. Johnson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
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June 30, 2021
Decision Dated and Mailed

lj/kmj