

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**NICOLE ENGLER**  
Claimant

**THE UNIVERSITY OF IOWA**  
Employer

**APPEAL 21A-UI-03494-SN-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/15/20**  
**Claimant: Appellant (1)**

Iowa Code § 96.19(38) – Definitions – Total, partial unemployment  
Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search  
Iowa Code § 96.7(2)A(2) – Charges – Same base period employment  
Iowa Admin. Code r. 871-24.23(26) – Eligibility – A&A – Part-time same hours, wages

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the January 12, 2021 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on March 25, 2021, at 8:00 a.m. The claimant participated and testified personally. The employer participated through Human Resources Business Analyst Jessica Wade. No exhibits were admitted. Official notice was taken of the administrative record.

**ISSUES:**

1. Whether claimant is totally, partially or temporarily unemployed?
2. Whether claimant is able to and available for work?
3. Whether claimant is still employed at the same hours and wages?
4. Whether employer's account is subject to charge?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant began employment as a staff nurse with the employer, the University of Iowa Hospitals and Clinics (UIHC), on May 9, 2011. Claimant works an average of 28 hours per week. Claimant's hourly wage is \$33.38. The administrative records show and claimant confirmed she has not worked for any other employers during her base period.

UIHC implemented a program in response to budgetary pressures it has experienced in the wake of the Covid19 pandemic. The program requires employees, within a certain salary range, to use vacation or to furlough for two weeks without pay. The claimant fell within this program's requirements.

The claimant exhausted her paid time off earlier in the year when she was on FMLA. So the claimant was left with the choice to furlough for two weeks.

From November 8, 2020 to November 15, 2020, the claimant elected to take her first furlough week. She did not receive any compensation for this week. The claimant could have worked if it had been offered to her.

On November 16, 2020, the claimant returned to work her regular hours.

On November 15, 2020, the claimant filed for unemployment insurance benefits. The claimant's weekly benefit amount is \$493.00. The claimant made a weekly claim for the week ending November 21, 2020. The administrative records show the claimant reported receiving \$999.00 for the week ending November 21, 2020.

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

For the reasons that follow, the administrative law judge concludes claimant was not totally, partially or temporarily unemployed for the week ending November 21, 2020.

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 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 Admin. 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) 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.

(b) An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(c) The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

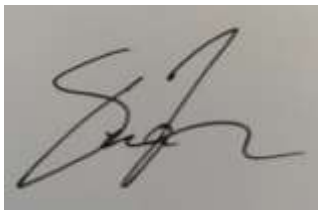
The claimant stated she worked her ordinary hours for the week ending November 21, 2020. The claimant's weekly benefit amount is \$493.00. The claimant reported earning \$999.00 for the week ending November 21, 2020. Since the claimant's earnings for that week exceed her weekly benefit amount plus \$15.00 dollars and she worked the same hours, she cannot be

partially unemployed as a matter of law. Since the claimant was not partially, temporarily or totally unemployed for the week ending November 21, 2020, the remaining issues are moot.

The parties agree the claimant was subject to furlough during the week ending November 15, 2020. However, the claimant did not make weekly claims for that week, so she cannot receive benefits for that week. Benefits are denied.

**DECISION:**

The January 12, 2021 (reference 01) unemployment insurance decision is affirmed. The claimant was not partially unemployed for the week ending November 21, 2020. Benefits are denied effective November 15, 2020.

A handwritten signature in black ink, appearing to read 'Sean M. Nelson', is written over a light gray rectangular background.

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Sean M. Nelson  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515) 725-9067

March 26, 2021  
Decision Dated and Mailed

smn/ol