

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NORMA J COLE
Claimant

HRB RESOURCES LLC
Employer

APPEAL 20A-UI-12127-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/10/20
Claimant: Appellant (4)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions
Iowa Code § 96.19(38) – Total, Partial, and Temporary Unemployment

STATEMENT OF THE CASE:

On October 2, 2020, Norma J. Cole (claimant) filed an appeal from the September 29, 2020, reference 01, unemployment insurance decision that denied benefits effective May 10, 2020, based upon the determination she was not able to and available for work due to illness. After due notice was issued, a telephone hearing was held on December 3, 2020. The claimant participated. The employer did not respond to the hearing notice and did not participate. The Claimant's Exhibits A through C were admitted into the record. The administrative law judge took official notice of the administrative record.

ISSUES:

Is the claimant totally, partially, or temporarily unemployed?
Was the claimant able to and available for work effective May 10, 2020?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant has worked for the employer as a part-time, seasonal Tax Professional since 2016. Normally, she works from January 1 through April 15, has summer work available, and, in the fall, has pre-season work available to her. The employer also has a policy requiring her to take off eight weeks of work per year. The 2020 tax season was extended to July 15.

On May 13, 2020, the claimant notified the employer that she did not feel safe working due to her age and medical conditions. The employer granted her a leave of absence. On or about August 21, the claimant notified the employer that she was ready to return to work. She reported to work, but they had locked her out of the systems and she was unable to perform work. The claimant returned to work and reported wages each week effective October 4. On October 6, the claimant's doctor wrote her note stating that she could not work for a minimum of two weeks due to the pandemic; however, the claimant continued to work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was totally unemployed, but was not able to work and available for work from May 10 through August 22 and benefits are denied. The claimant was temporarily unemployed from August 23 through the week ending October 3 and benefits are allowed. The claimant was not unemployed effective October 4 and benefits are denied.

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:

Definitions.

38. 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. 871-24.22(2) provides, in relevant part:

Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

...

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

Iowa Admin. Code r. 871-24.23 provides, in relevant part:

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

...

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

...

(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.

...

(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 totally, partially, or temporarily unemployed to be eligible for benefits. Iowa Code § 96.19(38). Total unemployment occurs when a claimant has received no wages and performed no services during any given week. *Id.* During times of total unemployment, the individual claiming benefits has the burden to prove that she is able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

The claimant was totally unemployed from May 10 through August 22, but she cannot establish that she was able to and available for work. The claimant requested, and the employer granted, a leave of absence due to her fear of COVID-19. She was voluntarily unemployed and not available for work. Accordingly, regular unemployment insurance benefits are denied.

Temporary unemployment occurs when the employee is available for work but the employer does not have work available. The claimant was temporarily unemployed August 23 through October 3, because she made herself available to the employer and the employer did not have work available to her. Benefits for that period are allowed.

The claimant returned to work effective October 4 and reported wages earned each week, so she was not totally or temporarily 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).

In this case, the claimant works in a part-time, seasonal position. She has worked part-time each week she has claimed benefits following October 4. During that time, her hours have fluctuated, as that was the expectation when she was hired. She continues to work for the employer. As the claimant is working in a part-time job in the same hours and wages contemplated at hire, she is not totally, partially, or temporarily unemployed. Benefits are denied effective October 4.

DECISION:

Regular Unemployment Insurance Benefits Under State Law

The September 29, 2020, reference 01, unemployment insurance decision is modified in favor of the appellant. The claimant was totally unemployed, but not able to work and available for work effective May 10 through August 22, 2020 and benefits are denied. The claimant was temporarily unemployed from August 23 through October 3 and benefits are allowed. The claimant was not totally, partially, or temporarily unemployed effective October 4 and benefits are denied.

Pandemic Unemployment Assistance (PUA) Under the Federal CARES Act

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, she may be eligible for federally funded unemployment insurance benefits under the CARES Act. 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 in FPUC through July 25. This decision does not address whether the claimant is eligible for PUA. For a decision on such eligibility, the claimant must self-certify for PUA, as noted in the instructions provided in the "Note to Claimant" on the last page.



Stephanie R. Callahan
Administrative Law Judge

December 11, 2020
Decision Dated and Mailed

src/scn

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. 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. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to self-certify for PUA to determine your eligibility under the program.** Additional information on how to self-certify for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.