

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

THERESA L THOMAS
Claimant

KWIK TRIP INC
Employer

APPEAL 20A-UI-05790-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/05/20
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(10) – Able & Available – Availability Disqualifications
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
PL 116-136, Sec. 2104(b) – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

On June 11, 2020, the claimant filed an appeal from the June 4, 2020, (reference 02) unemployment insurance decision that denied benefits based on claimant's availability for work. The parties were properly notified about the hearing. A telephone hearing was held on July 16, 2020. Claimant participated. Employer participated through store leader Ross Heggen.

ISSUES:

Is the claimant able to and available for work?
Is the claimant on a voluntary leave of absence?
Was the claimant overpaid unemployment insurance benefits?
Is the claimant eligible for Federal Pandemic Unemployment Compensation?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on June 21, 2019. Claimant works for employer as a part-time guest services co-worker.

In March 2020, employer asked employees if they believed the COVID 19 pandemic would affect their work hours. Claimant stated it would because of her and her husband's age and health conditions.

Claimant was put on a leave of absence from March 19, 2020, through May 4, 2020.

Claimant returned to work on a part-time basis in the cooler from May 4, 2020, through June 27, 2020. Claimant worked about 12 to 18 hours per week. Claimant did not work more hours because she wanted to continue to be eligible for unemployment insurance benefits.

On June 29, 2020, claimant had carpal tunnel surgery and will have a second surgery later in July. Claimant has been receiving short term disability benefits since June 29, 2020.

Claimant has received regular, state funded unemployment insurance benefits and Federal Pandemic Unemployment Compensation (FPUC) benefits since filing this claim with an effective date of April 5, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work effective April 5, 2020.

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. Code r. 871-24.23(10) provides:

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.

Here, claimant was on a leave of absence from March 19, 2020, through May 4, 2020, because of underlying health conditions and her age that puts her at high risk of complications if she contracts COVID 19. Claimant has not established she is able to and available for work, even under the United States Department of Labor's guidance to flexibly interpret this requirement. See Unemployment Insurance Program Letter No. 10-20. Therefore, claimant is not eligible for regular, state-funded unemployment insurance benefits during that time frame.

From May 4, 2020, claimant is not eligible for regular unemployment insurance benefits because she was employed on a part-time basis the same agreement made at the time of hire.

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.

To the extent she was working limited hours, it is because claimant wanted to remain eligible for benefits and was not making herself fully available for the regular 28 hours per week.

Finally, claimant is not eligible for benefits from June 27, 2020, until she is released to return to work. Claimant is unable to work because of a personal health condition. Claimant is receiving short-term disability benefits for this condition further evidence that she is considered currently not able to work.

Even though claimant is not eligible for regular unemployment insurance benefits under state law, 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 the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed.

The administrative law judge will not consider the issue of whether claimant has been overpaid benefits, as claimant may be eligible for Pandemic Unemployment Assistance, and in that case, such a decision would be unnecessary. However, the administrative law judge cautions claimant that if she is not approved for PUA, she may be found to have been overpaid benefits and will have to repay those benefits.

DECISION:

The June 4, 2020, (reference 02) unemployment insurance decision is affirmed. The claimant is not available for work effective April 5, 2020, and regular, state-funded unemployment insurance benefits are denied. Claimant may be eligible for Pandemic Unemployment Assistance during that time period.



Christine A. Louis
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

July 24, 2020
Decision Dated and Mailed

cal/mh

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 unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA 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.