

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KATIE E AUSTIN
Claimant

LIL SCHOLARS PRESCHOOL LLC
Employer

APPEAL 20A-UI-08656-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/22/20
Claimant: Appellant (4-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(10) – Able & Available – Leave of Absence
Iowa Code § 96.19(38) – Total, Partial, and Temporary Unemployment

STATEMENT OF THE CASE:

On July 27, 2020, Katie E. Austin (claimant) filed an appeal from the July 17, 2020, reference 03, unemployment insurance decision that denied benefits effective March 22, 2020, based upon the determination she was not able to and available for work. After due notice was issued, a telephone hearing was held on September 3, 2020. The claimant participated personally, and she was represented by Attorney Harley Erbe. The employer participated through Marci Johnston, Director. Three other employer witnesses were sworn in; however, they did not testify. The Claimant's Exhibits A through D and the Employer's Exhibits 1 through 10 were admitted into the record. During the hearing, the parties waived notice on the issue of total, partial, and temporary unemployment.

ISSUES:

Is the claimant totally, partially, or temporarily unemployed?
Was the claimant able to and available for work effective March 22, 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 effective January 7, 2013 as a full-time Lead Preschool Teacher. At the beginning of 2020, she requested intermittent time off over the first six months of the year to travel out of state to plan her wedding. At the beginning of March 2020, the COVID-19 pandemic began to affect Iowans on a large scale.

On March 13, Marci Johnston, Director, notified parents that if they or their child traveled out of state, they would need to quarantine for 14 days before the child could return to school. On March 15, the claimant questioned Johnston as to whether that would also apply to staff members, as many of them had plans to travel that month. Johnston responded that the employee would have to quarantine if they traveled to somewhere with a high rate of COVID-19. The claimant then asked about her upcoming plans to travel to Minnesota. Johnston responded

that all the schools in Minnesota had closed and the number of cases had tripled. She finished by stating, "I will have to see if you can return as it gets closer." (Exhibit B)

On March 17, Johnston sent out an email to staff. She asked staff members not to go out of town or be around large groups of family or friends. She reminded them that if a staff member became sick they would not be able to work.

The claimant traveled to Minnesota from March 19 through March 21. On March 22, the Iowa Department of Public Health (IDPH) issued an updated guidance regarding isolation procedures. IDPH recommended that anyone who had traveled out of Iowa in the previous 14 days should self-isolate. On March 23, the employer contacted the claimant and asked her to remain home in response to the new guidance. The claimant agreed to stay home and asked if she could use her paid time off. (Exhibit 4) The employer granted her request.

The claimant filed for unemployment insurance benefits effective March 22 and her weekly benefit amount is \$347.00. She received \$616.00 in vacation pay for the week ending March 28 and \$127.50 in vacation and sick pay for the week ending April 4. However, when filing her claims for unemployment benefits, the claimant only reported \$215.00 in vacation pay for the first week and \$13.00 for the second week.

The claimant returned to work on April 5. On April 9, Johnston told the claimant that she would be furloughed effective April 10. The claimant earned approximately \$550.00 in wages during the week ending April 11.

The claimant returned from her furlough during the week of May 3. She worked only 22.75 hours and earned approximately \$351.00 in wages, which she properly reported when making her weekly claim for benefits.

On May 11, the claimant worked approximately three hours and then resigned her employment. Whether the claimant is eligible for benefits effective May 10 because of the separation has not yet been investigated or adjudicated by the Benefits Bureau.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not able to and available for work for the two weeks between March 22 and April 4, 2020. Regular unemployment insurance benefits for those two weeks are denied. The claimant was not totally, partially, or temporarily unemployed the week ending April 11 and she is not eligible for benefits. She was temporarily unemployed from April 12 through the week ending May 2, and she is considered able to and available for work during that time. Benefits are allowed. The claimant was partially unemployed the week ending May 9 and partial benefits are allowed.

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(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.

The first issue in determining whether a claimant is eligible for unemployment benefits is whether the claimant meets the definition of unemployed. Total unemployment occurs when an individual does not perform services and does not earn wages. Temporary unemployment occurs when a claimant is laid off for no more than four weeks due the employer not having work available. Finally, partial unemployment occurs when the claimant works fewer hours than their normal work and earns less than their weekly benefit amount plus fifteen dollars.

In this case, the claimant was totally unemployed for the two-week period from March 22 through April 4. She received vacation pay but did not work or earn wages either of those weeks. Therefore, the claimant must be able to and available for work to be eligible for benefits. The claimant had requested time off from March 19 through March 21 to travel out of state. Before she went on her trip, she knew or should have known that she may be required to quarantine after her return. However, she still elected to travel. The claimant was on an approved leave of absence and was not able to and available for work. Benefits for those two weeks are denied.

The claimant returned to work the week of April 5. She earned gross wages in excess of \$362.00, or her weekly benefit amount plus fifteen dollars. The claimant does not meet the definition of unemployed during that week, and she is not eligible for unemployment insurance benefits.

Effective April 12, the claimant was laid off by the employer due to a lack of work with the understanding that she would return to work. The claimant was laid off until May 2. The claimant was temporarily unemployed and is considered able to and available for work during that time. The claimant worked reduced hours the week ending May 9 and earned less than her weekly benefit amount plus fifteen dollars. Therefore, she is eligible for benefits from April 12 through May 9.

Whether the claimant's separation on May 11 qualifies her for benefits effective May 10 is remanded for to the Benefits Bureau for a fact-finding interview followed by an unemployment insurance decision with appeal rights.

DECISION:

Regular Unemployment Insurance Benefits Under State Law

The July 17, 2020, reference 03, unemployment insurance decision is modified in favor of the appellant. The claimant was not able to and available for work from March 22 through April 4 and she worked enough hours to remove her from the labor market during the week ending April 11. Regular unemployment insurance benefits are denied for those three weeks. The claimant was temporarily or partially unemployed effective April 12 through the week ending May 9. Regular unemployment insurance benefits for that time are allowed.

Pandemic Unemployment Assistance (PUA) Under the Federal CARES Act

Even though the claimant is not eligible for regular unemployment insurance benefits under state law for the two weeks ending April 4, 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. This decision does not address whether the claimant is eligible for PUA. For a decision on such eligibility, the claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

REMAND:

Whether the claimant's separation on May 11 qualifies her for benefits effective May 10 is remanded for to the Benefits Bureau for a fact-finding interview followed by an unemployment insurance decision with appeal rights.



Stephanie R. Callahan
Administrative Law Judge

September 8, 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 apply for PUA to determine your eligibility under the program.** Additional information on how to apply 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.