

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MARILYN M OLSEN
Claimant

**HUMBOLDT COUNTY MEMORIAL
HOSPITAL**
Employer

APPEAL NO. 20A-UI-09698-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/10/20
Claimant: Appellant (1R)

Iowa Code § 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated July 29, 2020 reference 01, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on September 29, 2020. Claimant participated personally. Employer failed to respond to the hearing notice and did not participate.

ISSUES:

Whether claimant is able and available for work?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant works as a PRN nurse for employer.

Claimant is nearly 70 years old, and has various health issues. Claimant's husband needs daily cares. Claimant made the decision on or shortly after March 5, 2020 that she would be concentrating on the care for her husband and not working while the Covid is in existence. Claimant has continued to care for her husband that has comorbidity issues and needs daily nursing care. Claimant stated that she used to have someone aid in caring for her husband, but claimant saw this person out in public acting in a careless manner, and she decided that she didn't want to put her husband at risk. She continues to this day to not work.

REASONING AND CONCLUSIONS OF LAW:

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. 871-24.22(1)a provides:

Benefits 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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

Inasmuch as the claimant continues to care for her husband, claimant has removed herself from the job market and removed herself from her employer. During this time she is not eligible to receive unemployment benefits as she is not able and available for work.

Note to Claimant: 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. **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>.

DECISION:

The decision of the representative dated July 29, 2020, reference 01 is affirmed. Claimant is not eligible to receive unemployment insurance benefits, effective May 10, 2020 the date of the filing of her original claim in this matter.

This matter will be remanded to the benefits bureau for a determination on overpayment of state or federal benefits.



Blair A. Bennett
Administrative Law Judge

September 30, 2020
Decision Dated and Mailed

bab/mh