

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KASSANDRA L HAYES

Claimant

MARTIN LUTHER HOME CORPORATION

Employer

APPEAL 21A-UI-08805-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/31/20

Claimant: Respondent (2R)

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

The employer/appellant, Martin Luther Home Corporation, filed an appeal from the March 15, 2021 (reference 04) Iowa Workforce Development (“IWD”) unemployment insurance decision that allowed benefits. A first hearing was scheduled for June 4, 2021 but postponed due to an unexpected doctor’s appointment for the claimant.

The parties were properly notified about the hearing. A telephone hearing was held on July 2, 2021. The hearing was held together with Appeal 21A-UI-08306-JC-T. The claimant, Kassandra Hayes, participated. The employer participated through Jennifer Groenwold, hearing representative with Talx/Equifax. Janet Warren testified.

The administrative law judge took official notice of the administrative records. Employer Exhibit 1 was admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was the claimant able and available for work August 9, 2021?
Was the claimant totally, partially or temporarily unemployed?
Is the employer’s account subject to charges?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was a full-time CNA until September 11, 2020. The issue of claimant’s separation has not yet been addressed by the Benefits Bureau.

Claimant was issued a written reprimand for failing to wear her personal protection equipment (PPE) on August 12, 2020. Claimant’s schedule varied each week from 7-12 hour shifts (so she did not work a set schedule of five days per week, at eight hours each shift.) Claimant began

calling off each day, citing she had a 100 degree temperature. From August 9, 2020 until September 11, 2020, claimant worked as follows:

8/9	PTO
8/10	Not scheduled
8/11	Not scheduled
8/12	Not scheduled
8/13	Worked 11.75 hr
8/14	Called off due to illness
8/15/	Called off due to illness
8/16	Called off due to illness
8/17	Called off due to illness
8/18	Not scheduled
8/19	Not scheduled
8/20	Called off due to illness
8/21	Called off due to illness
8/22	Not scheduled
8/23	Not scheduled
8/24	Called off due to illness
8/25	Called off due to illness
8/26	Not scheduled
8/27	Not scheduled
8/28	Not scheduled
8/29	Called off due to illness
8/30	Called off due to illness
8/31	Online training 1.5 hr
09/01	Called off due to illness
09/02	Called off due to illness
09/03	Not scheduled
09/04	Not scheduled
09/05	Not scheduled
09/06	Not scheduled
09/07	Not scheduled
09/08	Worked 12 hr
09/09	Worked 7.25 hr
09/10	Worked 15.75 hr
09/11	Worked 5 hr and separated

Employer had work available to claimant. Claimant did not seek a COVID-19 test based upon her repeated fevers. Employer required claimant to present a doctor's note to return to work and when she presented it, she resumed employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not able and available from August 9, 2020 to September 11, 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 96.1A, subsection 38, paragraph "b", subparagraph (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(1) provides:

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

(1) An individual who is ill and presently not able to perform work due to illness.

Iowa Admin. Code r. 871-24.23(23) provides:

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

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

For an individual to be eligible to receive benefits, she must be able to work, available for work, and actively seeking work as required by the unemployment insurance law. Iowa Code § 96.4(3). The burden is on the claimant to establish that she is able and available for work within the meaning of the statute. Iowa Code § 96.6(2); Iowa Admin. Code r. 871-24.22.

For the period in question, claimant called off repeatedly citing to a 100 degree fever, which is consistent with illness. For other days claimant did work, she was working as scheduled and therefore, not unemployed. Claimant was not laid off due to a lack of work prohibited from working. Therefore, the claimant is not eligible for regular, state-funded unemployment insurance benefits.

The issue of claimant's September 11, 2021 separation is remanded to the Benefits Bureau for an initial investigation and decision.

DECISION:

The unemployment insurance decision dated March 15, 2021, (reference 04) is REVERSED. The claimant is not able and available for work effective August 9, 2020. Regular unemployment insurance benefits funded by the state of Iowa are denied until such time the claimant is able to and available for work.

REMAND:

The issue of claimant's September 11, 2021 separation is remanded to the Benefits Bureau for an initial investigation and decision.



Jennifer L. Beckman
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

July 15, 2021

Decision Dated and Mailed

jlb/kmj

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 unemployed or continue to be 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.

ATTENTION: On May 11, 2021, Governor Reynolds announced that Iowa will end its participation in federal pandemic-related unemployment benefit programs effective June 12, 2021. The last payable week for PUA in Iowa will be the week ending June 12, 2021. Additional information can be found in the press release at <https://www.iowaworkforcedevelopment.gov/iowa-end-participation-federal-unemployment-benefit-programs-citing-strong-labor-market-and>.

You may find information about food, housing, and other resources at <https://covidrecoveryiowa.org/> or at <https://dhs.iowa.gov/node/3250>

Iowa Finance Authority also has additional resources at <https://www.iowafinance.com/about/covid-19-ifa-recovery-assistance/>