

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CASSANDRA D BEAMAN
Claimant

SUNDANCE INC
Employer

APPEAL 20A-UI-05179-S1-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

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

Iowa Code § 96.4(3) – Ability to and Availability for Work
871 IAC 24.23(10) – Voluntary Leave of Absence

STATEMENT OF THE CASE:

Cassandra Beaman (claimant) appealed a representative's May 28, 2020, decision (reference 01) that denied benefits based on her temporary separation from Sundance (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 29, 2020. The claimant participated personally. The employer participated by Chaquiena Robinson, General Manager, and Nihad Avdic, Area Coach. The administrative law judge took official notice of the administrative file.

ISSUES:

The issue is whether the claimant is able and available for work and whether she was on an approved leave of absence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired for a second period of employment on or about April 2018. She was working as a full-time shift manager in mid-April 2020, when she lost her childcare due to the pandemic. The claimant returned to work on or about June 6, 2020.

The claimant filed for unemployment insurance benefits with an effective date of April 5, 2020. Her weekly benefit amount was determined to be \$291.00. The claimant has not received any unemployment insurance benefits or Federal Pandemic Unemployment Compensation.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.19(38) provides:

"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.

In order to receive regular unemployment insurance benefits under Chapter 96 of the Iowa Code, a totally unemployed claimant must establish he or she is able to and available for work. Iowa Code § 96.4(3).

In this case, the claimant was totally unemployed. So the issue is whether she is able to and available for work.

Iowa Admin. Code r. 871-24.23(8) provides:

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

- (8) Where availability for work is unduly limited because of not having made adequate arrangements for child care.

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). When an employee is spending working hours caring for children, she is considered to be unavailable for work. The claimant was providing childcare. She is considered to be unavailable for work.

The employer had work available for claimant. However, the claimant informed the employer she was unable to work due to lack of childcare. The employer agreed to allow the claimant time off for that reason. The 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.

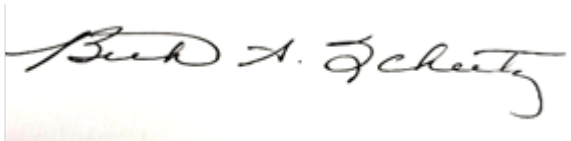
The claimant is considered to be on a leave of absence due to her lack of childcare and is not available for work. Therefore, the claimant is not eligible for regular, state-funded unemployment insurance benefits.

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 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 claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

DECISION:

The May 28, 2020, (reference 01) unemployment insurance decision is affirmed. The claimant is not able to work and available for work effective April 5, 2020. Regular unemployment insurance benefits funded by the state of Iowa are denied until such time as the claimant is able to and available for work.

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>.



Beth A. Scheetz
Administrative Law Judge
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July 8, 2020
Decision Dated and Mailed

bas/scn