

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**ANTONETTE GREER**  
Claimant

**ABCM CORPORATION**  
Employer

**APPEAL NO. 23A-UI-10720-JT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/16/23  
Claimant: Appellant (3)**

Iowa Code Section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

On November 15, 2023, Antonette Greer (claimant) filed a timely appeal from the November 16, 2023 (reference 02) decision that denied benefits for the week of October 22-28, 2023, based on the deputy's conclusion the claimant was ill and unable to work during the majority of that week. The reference 02 also allowed benefits for the period beginning October 29, 2023, provided the claimant was otherwise eligible. After due notice was issued, a hearing was held on December 4, 2023. Claimant participated. Allison Barker represented the employer. Exhibits A and B were received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, WAGEA, NMRO, the reference 01 decision and the administrative law judge decision in Appeal Number 23A-UI-04986-B2T.

**ISSUE:**

Whether the claimant has been able to work and available for work since she established the additional claim that was effective October 22, 2023.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Antonette Greer (claimant) established an original claim for benefits that was effective April 16, 2023. Iowa Workforce Development set Ms. Greer's weekly benefit amount at \$240.00.

Ms. Greer has at all relevant times been employed as a part-time laundry aide at ABCM Corporation, doing business as Harmony House. The claimant performs her work duties at a long-term care facility. The claimant's established work schedule follows a two-week cycle wherein the claimant worked four days one week and five days the next week. The work schedule includes shifts on alternating weekends. The claimant's Saturday and Sunday hours are 7:00 a.m. to 2:00 p.m. Then claimant's work hours on other days are 7:00 a.m. to 11:00 a.m. The claimant has Thursdays off. The claimant has at all relevant times averaged about 16 hours per week. Since July 2023, the claimant's hourly wage has been \$15.60.

During the week of October 15-21, 2023, she reactivated her unemployment insurance claim, but did not make a weekly claim for that week.

The claimant established an “additional claim” for benefits that was effective October 22, 2023. Since the claimant established the “additional claim,” she has made weekly claims for each of the five weeks between October 22, 2023 and November 25, 2023.

On Friday, October 13, 2023, the claimant tested positive for COVID-19 pursuant a test the employer administered upon the claimant’s arrival for work. The employer sent the claimant home for a week. The parties mutually understood the claimant could return to work on Friday, October 20, 2023.

The claimant did not return to work on Friday, October 20, 2023. Instead, the claimant notified the employer that she was ill, that she was dehydrated, and that she needed to stay home from work another day.

The claimant was next scheduled to work on Saturday, October 21, 2023, but did not return to work that day. The claimant notified the employer that she would be absent due to illness from her weekend shifts on Saturday, October 21 and Sunday, October 22. During that contact, the claimant’s supervisor told the claimant that a human resources representative would contact the claimant on Monday, October 23, 2023.

On Monday, October 23, 2023, the employer contacted with the claimant. At that time, the claimant stated she was still not feeling well and would be returning to the doctor. The employer asked the claimant to bring a doctor’s note when she was ready to return to the employment.

The claimant continued to be ill and unable to work through Thursday, October 26, 2023.

On Friday, October 27, 2023, the claimant return to work a four-hour shift. Upon her return to work, the claimant presented a medical note to the employer. The note stated the claimant had been seen on October 26, had been ill from October 13, 2023 until October 26, 2023, and was released to return to work on October 27, 2023.

The claimant has continued in her regular duties and her regular work schedule since returning to work on Friday, October 27, 2023.

The employer paid the claimant her regular weekly wages for the time the claimant was off work due to COVID. This included \$249.60, the equivalent of 16 hours’ wages, for the week ending October 21, 2023. For the week that ended October 28, 2023, the employer also paid the claimant the four hours of work the claimant performed on October 27, and for 16 hours the claimant did not work. The wages for the week ending October 28, 2023 totaled \$312.00.

#### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.4(3) provides as follows:

96.4 Required findings. An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. a. 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 37, paragraph “b”, subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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) and (2) 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.

...

(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.

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.

...

(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.

If a claimant individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. Iowa Code section 96.7(2)(a)(2)(a).

The claimant has not met the able and available requirements since she established the additional claim for benefits that was effective October 22, 2023.

During the week that ended October 28, 2023, the employer had the claimant's regular work hours available. The claimant was ill through Thursday, October 26, 2023, was well enough to work only the one shift on October 27, 2023. Because the claimant was unable to work due to illness and unavailable for work due to illness for the majority of the work, the claimant did not meet the availability requirement during that week. In addition, the employer paid the claimant her regular wages during that week. The claimant is not eligible for benefits for the week that ended October 28, 2023.

For the period beginning October 29, 2023 through the present, the employer has continued to have the claimant's regular work hours available and the claimant has continued in the employment under the established work hours, work schedule and wages. The claimant is not eligible for benefits for the period beginning October 29, 2023. The disqualification is ongoing.

**DECISION:**

The November 16, 2023 (reference 02) decision is MODIFIED adverse to the claimant. The claimant has not met the able and available requirements since she established the additional claim for benefits that was effective October 22, 2023. Benefits are denied effective October 22, 2023. The disqualification is ongoing and includes, but is not limited to, the period beginning October 29, 2023 through the present.



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James E. Timberland  
Administrative Law Judge

December 12, 2023  
Decision Dated and Mailed

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**APPEAL RIGHTS.** If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board  
6200 Park Ave  
Des Moines, Iowa 50321  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://eab.iowa.gov)**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

**AN APPEAL TO THE BOARD SHALL STATE CLEARLY:**

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

**Note to Parties:** YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

**Note to Claimant:** It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**DERECHOS DE APELACIÓN.** Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board  
6200 Park Ave  
Des Moines, Iowa 50321  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://eab.iowa.gov)**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

**UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:**

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

**Nota para las partes:** USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

**Nota para el reclamante:** es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

**SERVICIO DE INFORMACIÓN:**

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.