

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CRYSTAL BOUDREAU

Claimant

APPEAL 21A-UI-00165-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC

Employer

OC: 07/19/20

Claimant: Appellant (4)

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Admin. Code r. 871-24.23(10) – Leave of Absence

STATEMENT OF THE CASE:

Crystal Boudreau, the claimant/appellant, filed an appeal from the November 13, 2020, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on February 3, 2021. Ms. Boudreau participated and testified. Amie Boudreau testified on Ms. Boudreau's behalf. The employer participated through Elizabeth Guerrero. Claimant's Exhibits A, B and C were admitted.

ISSUES:

Is Ms. Boudreau able to and available for work?
Is Ms. Boudreau on a voluntary leave of absence?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Boudreau began working for employer on July 11, 2016. She worked as a full-time building maintenance.

On July 11, 2020 Ms. Boudreau began a medical leave of absence/short-term disability leave. Due to injuries she suffered in the domestic violence incident in May 2020, Ms. Boudreau experienced several bouts of dizziness, high temperatures and shakiness at work and she was not unable to do her job. Ms. Boudreau returned to work on September 4. Ms. Boudreau was paid for short-term disability at her regular hourly pay during this leave until August 24, 2020.

Ms. Boudreau was on a medical leave of absence again from September 28, 2020 through October 25, 2020. Ms. Boudreau had a COVID-19 symptom and per the employer's policy was not allowed to return to work until her doctor released her to return to work.

Ms. Boudreau took vacation leave from October 26, 2020 through November 10, 2020 because she was concerned that her eligibility for unemployment insurance benefits would run out. During the time period when she took vacation leave, Ms. Boudreau was still under her doctor's

orders to not work. Ms. Boudreau was on a medical leave of absence again from November 11, 2020 through December 30, 2020. Ms. Boudreau continued to have a COVID-19 symptom and per the employer's policy was not allowed to return to work until her doctor released her to return to work. On December 31, 2020, Ms. Boudreau's doctor released her to return to work and she did return to work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, this administrative law judge concludes that Ms. Boudreau is not able and available for work from July 19, 2020 through September 3, 2020 and from September 28, 2020 through December 30, 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 96.19, 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. 871-24.23(10) and (35) provide:

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.

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

In this case, Ms. Boudreau was not able to do her job from July 11, 2020 through September 3, 2020. Ms. Boudreau's symptoms from the May 2020 domestic violence incident made her employer concerned that she might be injured on the job. For her safety, the employer put Ms. Boudreau on a medical leave of absence and Ms. Boudreau agreed to the leave. Since Ms. Boudreau was not able to work during this time period, regular, state-funded unemployment insurance benefits are denied during this time period.

From September 28, 2020 through December 30, 2020, Ms. Boudreau was under her doctor's order to not work. Ms. Boudreau was unavailable to work during this time period. Regular, state-funded unemployment insurance benefits are denied during this time period.

Even though Ms. Boudreau 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 for the month of December 2020. 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 up to 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.

DECISION:

The November 13, 2020, (reference 01) unemployment insurance decision is modified in favor of the appellant, Ms. Boudreau. Ms. Boudreau is not available for work from July 19, 2020 through September 3, 2020 and from September 28, 2020 through December 30, 2020, and regular, state-funded unemployment insurance benefits are denied during these time periods.



Daniel Zeno
Administrative Law Judge

February 18, 2021
Decision Dated and Mailed

dz/kmj

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. 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.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA, you may be required to repay the benefits you've received so far.**