

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

MARTHA S MOORE
Claimant

CARE INITIATIVES
Employer

APPEAL 22A-UI-12205-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/10/22
Claimant: Respondent (2)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions
Iowa Code § 96.1A(37) – Total, Partial, and Temporary Unemployment

STATEMENT OF THE CASE:

On May 12, 2022, Care Initiatives (employer) filed an appeal from the May 2, 2022, reference 01, unemployment insurance decision that allowed benefits effective April 10, 2022, based upon the determination Martha S. Moore (claimant) was temporarily unemployed and considered able to and available for work. After due notice was issued, a telephone hearing was held on August 23, 2022. The claimant did not respond to the hearing notice and did not participate. The employer participated through Amanda Loesche, Payroll and Benefits Manager, and was represented by Thomas Kuiper from Talx UCM Services. No exhibits were offered into the record. The administrative law judge took official notice of the claimant's claim history.

ISSUES:

Is the claimant totally, partially, or temporarily unemployed?
Was the claimant able to work, available for work, and actively and earnestly seeking work effective April 10, 2022?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began working for the employer full-time on February 19, 2022, as a CNA in training. The employer is a long-term care facility. It put a policy into place that all employees must be vaccinated for Covid-19 or request an exemption by March 15. The employer posted signs and sent out daily automated text messages reminding employees of the deadline.

On March 21, the claimant had not been vaccinated nor had she requested an exemption, and the employer mailed a letter to her home address. The letter reminded her of the policy and put her on notice that if she was not vaccinated by April 4, she would be subject to a 21-day administrative leave.

The claimant was not vaccinated by April 4 nor had she requested an exemption and was placed on administrative leave. She returned to work on April 29 and was completely vaccinated. The employer had work for the claimant during her leave had she complied with the vaccination policy.

The claimant filed the original claim for benefits effective April 10, and she filed weekly claims for the three weeks ending April 30. The claimant reported wages earned during the final week, but no wages earned during the first two weeks.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not able to work, available for work, and actively and earnestly seeking work effective April 10, 2022. Benefits are denied.

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 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 Code section 96.1A(37) 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.

Iowa Admin. Code r. 871-24.23(20) provides:

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

(20) Where availability for work is unduly limited because the claimant is waiting to be recalled to work by a former employer or waiting to go to work for a specific employer and will not consider suitable work with other employers.

Under Iowa Employment Security Law, an individual must be unemployed to be eligible for unemployment insurance benefits. Iowa Code § 96.1A(37). Total and temporary unemployment occur when an individual does not work or earn wages in any given week. However, temporary employment occurs when the employer does not have work for the claimant and the unemployment lasts for fewer than four consecutive weeks. Partial unemployment occurs when a person works and earns wages less than their weekly benefit amount plus fifteen dollars.

In this case, the claimant did not work and earn wages during the administrative leave; therefore, she was not partially unemployed. Additionally, she was not temporarily unemployed because the employer did not lay her off due to a lack of work or some other situation outside the claimant's control. The claimant was totally unemployed during the leave and is required to be able to and available for work to be eligible for unemployment insurance benefits.

An individual claiming benefits has the burden to prove that she is able to work, available for work, and actively and earnestly seeking work. Iowa Admin. Code r. 871-24.22. Based on the unrefuted testimony, the claimant was on administrative leave and waiting to return to work with the employer. As a result, she has not established that she was genuinely attached to the labor market during that time. Accordingly, the claimant is not eligible for unemployment insurance benefits.

DECISION:

The May 2, 2022, reference 01, unemployment insurance decision is reversed. The claimant was totally unemployed and not able to work and available for work effective April 10, 2022. Benefits are denied.

A handwritten signature in blue ink that reads "Stephanie R Callahan" with a long horizontal flourish extending to the right.

Stephanie R. Callahan
Administrative Law Judge

September 29, 2022
Decision Dated and Mailed

src/mh

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
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: 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> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

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
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: 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 se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

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.