

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**ANN M FAIRCHILD**  
Claimant

**HY-VEE INC**  
Employer

**APPEAL NO. 20A-UI-11421-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/21/20**  
**Claimant: Appellant (1R)**

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Iowa Code Section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

Ann Fairchild filed a timely appeal from the September 8, 2020, reference 01, decision regarding her July 27, 2020 voluntary quit that the Appeals Bureau treated as also an appeal from the September 8, 2020, reference 01, decision that denied benefits effective June 21, 2020, based on the deputy's conclusion that Ms. Fairchild was not partially unemployed. After due notice was issued, a hearing was held on November 23, 2020. Ms. Fairchild participated. Barbara Buss from Corporate Cost Control, Inc. represented the employer and presented testimony through Teri Lunning, Renee Aukes and Doug Rosendahl. The hearing in this matter was consolidated with the hearing and appeal number 20A-UI-11422-JTT. Exhibits A and B were received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO and KCCO.

**ISSUE:**

Whether the claimant was able to work and available work beginning June 21, 2020.

Whether the claimant was temporarily and/or partially unemployed beginning June 21, 2020.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Ann Fairchild established an original claim for benefits that was effective June 21, 2020. Iowa Workforce Development set the weekly benefit amount for regular state benefits at \$424.00. No benefits have been paid on the claim. Ms. Fairchild filed the original claim for benefits in response to being discharged by Hy-Vee on June 21, 2020. However, later in the day on June 21, 2020, Hy-Vee rescinded the discharge and granted Ms. Fairchild two weeks of paid time off. Ms. Fairchild returned to the full-time employment effective July 6, 2020 and continued in the full-time employment until July 27, 2020, when she voluntarily quit. After Ms. Fairchild established the original claim that was effective June 21, 2020, she did not make any weekly claims until after she reactivated the claim effective August 30, 2020. By that time, Ms. Fairchild had started new full-time employment.

## REASONING AND CONCLUSIONS OF LAW:

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. 871-24.22(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.

(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(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.

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.

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).

Iowa Administrative Code rule 871-24.2(1)(g) provides as follows:

(g). No continued claim for benefits shall be allowed until the individual claiming benefits has completed a continued claim or claimed benefits as otherwise directed by the department.

(1) The weekly continued claim shall be transmitted not earlier than 8 a.m. on the Sunday following the Saturday of the weekly reporting period and, unless reasonable cause can be shown for the delay, not later than close of business on Friday following the weekly reporting period.

Ms. Fairchild is not eligible for benefits for the period beginning June 21, 2020. She did not make any weekly claims until after she established the additional claim for benefits that was effective August 30, 2020. She continued to be employed full-time effective June 21, 2020 and through July 27, 2020. She continued to enjoy full-time wages for the period of June 21, 2020 through July 27, 2020. While Ms. Fairchild met the able and available requirement during the period of June 21, 2020 through the benefit week that ended July 4, 2020, her continued full-time wages prevent her from meeting the definition of temporarily or partially unemployed during that period. Upon her return to work on July 6, 2020, she was working full-time, was otherwise removed from the broader labor market and, therefore, did not meet the unemployment insurance "availability" requirement. Because Ms. Fairchild was working full-time, she cannot be deemed temporarily or partially unemployed during the period beginning July 5, 2020.

#### **DECISION:**

The September 8, 2020, reference 01, decision is affirmed. During the period of June 21, 2020 through July 4, 2020, the claimant was able to work, available for work, but neither temporarily or partially unemployed within the meaning of the law. During the period beginning July 5, 2020, the claimant was working full-time, did not meet the availability requirement, and was

neither temporarily nor partially unemployed. The claimant did not make any weekly claims for the period of June 21, 2020 through August 29, 2020. Benefits are denied for the period beginning June 21, 2020 through August 29, 2020.

This matter is remanded to the Benefits Bureau for initial determination of whether the claimant was able to work, available for work, temporarily or partially unemployed during the period beginning August 30, 2020.



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James E. Timberland  
Administrative Law Judge

December 7, 2020  
Decision Dated and Mailed

jet/scn

**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>.