

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

VANESSA L OSTRANDER
Claimant

MERCY HEALTH SERVICES – IOWA CORP
Employer

APPEAL NO. 20A-UI-07918-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/12/20
Claimant: Appellant (4)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Vanessa Ostrander filed a timely appeal from the June 25, 2020, reference 01, decision that denied benefits for the period beginning April 12, 2020, based on the deputy's conclusion that Ms. Ostrander requested and was granted a leave of absence, was voluntarily unemployed, and was not available for work. After due notice was issued, a hearing was held on August 18, 2020. Ms. Ostrander participated. Frank Shoemaker represented the employer and presented testimony through Pat Sisler. Exhibits 1, 2, 3, A and B were received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX and WAGE-A.

ISSUES:

Whether Ms. Ostrander was able to work and available for work during the period of April 12, 2020 through May 30, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Vanessa Ostrander is employed by Mercy Health Services-Iowa Corporation, doing business as Mercy One, as a full-time dietetic assistant. Ms. Ostrander has a rare medical condition affecting her airway for which she is prescribed an immune suppressive medication. In response to the COVID-19 pandemic, Ms. Ostrander's physician advised her to work from home if possible, but to refrain from working in the workplace until June 1, 2020. Ms. Ostrander's duties could not be performed from home. On April 8, 2020, the physician provided the employer with a healthcare provider certification of serious medical condition in support Ms. Ostrander's need to absent herself from the workplace until June 1, 2020. The employer approved the request for a leave of absence, with a return to work date of June 1, 2020. Ms. Ostrander was on an approved leave of absence from April 12, 2020 until she returned to work on June 1, 2020. The employer continued to have Ms. Ostrander's regular full-time work available for her during the time she was on her leave of the absence.

Ms. Ostrander established an original claim for benefits that was effective April 12, 2020. Ms. Ostrander made weekly claims for seven weeks between April 12, 2020 and May 30, 2020

and received benefits for that period. Ms. Ostrander then discontinued her claim in connection with her return to work on June 1, 2020.

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(10) provides:

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.

In connection with the Covid-19 pandemic and passage of the Public Law 116-136, the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act), Iowa Workforce Development published on its website a list of COVID-19-related scenarios under which a

claimant would be eligible for unemployment insurance benefits. The scenarios create limited and temporary modifications to the able and available requirements set forth at Iowa Code section 96.4(3). These scenarios included circumstances wherein the claimant is immune-suppressed and is advised by a medical professional to quarantine. See <https://www.iowaworkforcedevelopment.gov/COVID-19>, updated March 30, 2020.

If a claimant 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. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5. Iowa Code Section 96.7(2)(a)(2)(a).

Ms. Ostrander met the COVID-19 modified able and available requirements during the seven weeks between April 12, 2020 and May 30, 2020. During that period, Ms. Ostrander was indeed on a leave of absence that she requested and that the employer approved. Ms. Ostrander is an immune suppressed person and was advised by her physician to quarantine during the entire period when Ms. Ostrander's unemployment insurance claim was active. Ms. Ostrander is eligible for benefits for the period of April 12, 2020 through May 30, 2020, provided she meets all other eligibility requirements. The employer continued to have full-time work available for Ms. Ostrander throughout the period when the claim was active and, therefore, will not be charged for benefits for the period of April 12, 2020 through May 30, 2020.

DECISION:

The June 25, 2020, reference 01, decision is modified in favor of the claimant/appellant as follows. The claimant met the COVID-19 modified able and available requirements during the seven weeks between April 12, 2020 and May 30, 2020 and is eligible for benefits for that period, provided she is otherwise eligible. The employer's account will not be charged for benefits paid to the claimant for the period of April 12, 2020 through May 30, 2020.



James E. Timberland
Administrative Law Judge

August 24, 2020
Decision Dated and Mailed

jet/scn