

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**MARYLEE A SMITH**  
Claimant

**APPEAL NO. 20A-UI-06922-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA CVS PHARMACY LLC**  
Employer

**OC: 03/22/20**  
**Claimant: Appellant (1)**

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Iowa Code Section 96.4(3) – Able & Available  
Iowa Admin. Code r. 871-24.23(10) – Leave of Absence

**STATEMENT OF THE CASE:**

Marylee Smith filed a timely appeal from the June 16, 2020, reference 01, decision denied regular benefits for the period beginning March 22, 2020, based on the deputy's conclusion that Ms. Smith was on a leave of absence that she requested and that the employer approved, that she was voluntarily unemployed, and that she was not available for work. After due notice was issued, a hearing was held on July 30, 2020. Ms. Smith participated and presented additional testimony through Harry Smith. The employer did not provide a telephone number for the hearing and did not participate. Exhibits A and B were received into evidence at the time of the hearing. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX and WAGE-A. The administrative law judge took official notice of the Agency's decision approving Ms. Smith for Pandemic Unemployment Assistance (PUA). The administrative law judge left the hearing record open for the limited purpose of allowing Ms. Smith to submit additional medical documentation. Ms. Smith submitted additional documentation on July 30, 2020 and that material was received into the record as Exhibit C.

**ISSUES:**

Whether the claimant was able to work and available for work for the period beginning March 22, 2020.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Marylee Smith established an original claim for benefits that was effective March 22, 2020. CVS is Ms. Smith's sole base period employer. Iowa Workforce Development set Ms. Smith's weekly benefit amount for regular benefits at \$175.00. By the time of the July 30, 2020 appeal hearing, Mr. Smith had made weekly claims for consecutive weeks between March 22, 2020 and July 25, 2020. Ms. Smith has received regular benefits and Federal Pandemic Unemployment Compensation. Ms. Smith has been approved for Pandemic Unemployment Assistance (PUA) in the amount of \$203.00 per week effective March 22, 2020.

Ms. Smith has been employed with CVS for about 23 years. For the last couple years, the employment has been part-time, 18 to 22 hours per week. Ms. Smith reports to Mike Honaker, Manager. Ms. Smith last performed work for the employer on March 25, 2020. Ms. Smith was thereafter off work for a couple days due to pinkeye. Ms. Smith then began an approved leave of absence. Ms. Smith has fourth-stage cancer. Ms. Smith and her family decided it was best for Ms. Smith to go off work in light of the COVID-19 pandemic. Ms. Smith requested a leave of absence and the employer approved the request. Ms. Smith continued off work at the time of the July 30, 2020 appeal hearing.

Ms. Smith has provided a medical note, dated April 9, 2020, that states:

Due to underlying medical condition(s) it is medically appropriate for Marylee A. Smith to be off work and/or work from home (if applicable) until 4/30/2020.

He/She may return to work without restrictions following this period of time.

Ms. Smith has provided similar notes that take her off work through May 18, June 1, June 30, and July 31, 2020. The later notes omit reference to Ms. Smith being released to return to work at the end of the covered period.

#### **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.

Ms. Smith has been on an approved leave of absence due to being high risk for COVID-19 since established her claim for benefits. Ms. Smith does not meet the availability requirements set forth at Iowa Code section 96.4(3), even under the United States Department of Labor's guidance to flexibly interpret this requirement. See Unemployment Insurance Program Letter No. 10-20. Therefore, claimant is not eligible for regular, state-funded unemployment insurance benefits from the effective date of the claim. Ms. Smith has been separately approved for Pandemic Unemployment Assistance (PUA), federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136. Section 2102, which provides up to 39 weeks of unemployment benefits. That is the program that applies to Ms. Smith's circumstances. An individual receiving PUA benefits may also receive 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 June 16, 2020, reference 01, decision is affirmed. The claimant has not been able and available for work within the meaning of Iowa Code Section 96.4(3) since establishing her claim for benefits. Accordingly, the claimant is not eligible for regular state benefits for the period beginning March 22, 2020. This decision will not impact the claimant's separate approval for PUA benefits.



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James E. Timberland  
Administrative Law Judge

September 15, 2020  
Decision Dated and Mailed

jet/scn