

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**SHAVONDA OLIVER**  
Claimant

**DRIVELINE RETAIL MERCHANDISING INC**  
Employer

**APPEAL 20A-UI-13197-DB-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/05/20**  
**Claimant: Respondent (2R)**

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

**STATEMENT OF THE CASE:**

On October 23, 2020, the employer filed an appeal from the October 14, 2020 (reference 01) unemployment insurance decision that allowed benefits to the claimant based on a short-term layoff. The parties were properly notified about the hearing. A telephone hearing was held on December 22, 2020. Claimant did not participate. The employer, Driveline Retail Merchandising Inc., participated through witness Kaitlyn Seehorsch. Employer's Exhibit 1 was admitted. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

**ISSUES:**

Is the claimant able to and available for work?  
Is the claimant on an approved leave of absence?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant has worked for the employer since October 22, 2018. She works part-time as a merchandiser. Claimant was never laid off due to lack of work.

The week of April 5, 2020 through April 11, 2020, the claimant worked 30.96 hours and earned \$10.00 per hour. Claimant filed a claim for unemployment insurance benefits effective April 5, 2020. Claimant reported earning \$0.00 in gross wages for the week-ending April 11, 2020. Effective April 11, 2020, the claimant took a leave of absence from work due to concerns related to the COVID 19 pandemic and her pregnancy. She returned back to her regular part time position on September 29, 2020. Claimant filed weekly continued claims for benefits from April 5, 2020 through September 26, 2020. There was continuing work available to the claimant if she had not requested to be on a leave of absence from work.

Claimant's administrative records establish that she received regular unemployment insurance benefits funded by the State of Iowa, Federal Pandemic Unemployment Compensation benefits, and Pandemic Emergency Unemployment Compensation benefits. The issue of overpayment

of benefits will be remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes as follows:

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", subparagraph (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 Code § 96.19(38)b provides:

As used in this chapter, unless the context clearly requires otherwise:

38. "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(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.

For the week of April 5, 2020 through April 11, 2020 the claimant was working to an extent that removed her from the labor market. Benefits are denied for April 5, 2020 through April 11, 2020 pursuant to Iowa Code § 96.4(3).

Effective April 11, 2020 through September 28, 2020, the claimant was on an approved leave of absence from work and was not available for work pursuant to Iowa Code § 96.4(3). As such, the period of time she was not working is deemed to be a period of voluntary unemployment.

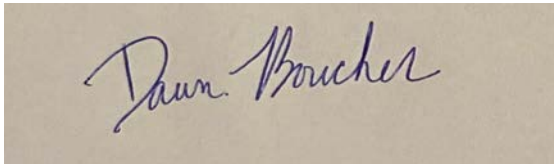
Claimant has not established that she is able to and available for work pursuant to Iowa Code § 96.4(3). Therefore, claimant is not eligible for regular, state-funded unemployment insurance benefits. Regular unemployment insurance benefits funded by the State of Iowa are denied effective April 5, 2020 through the benefit week-ending September 26, 2020.

**DECISION:**

The October 14, 2020 (reference 01) unemployment insurance decision is reversed. The claimant was not able to work and available for work effective April 5, 2020 through September 26, 2020. Unemployment insurance benefits funded by the State of Iowa are denied effective April 5, 2020 through September 26, 2020.

**REMAND:**

The issues of whether the claimant has been overpaid regular unemployment insurance benefits, Federal Pandemic Unemployment Compensation benefits, and Pandemic Emergency Unemployment Compensation benefits are remanded to the Benefits Bureau for initial investigations and determinations.

A rectangular box containing a handwritten signature in blue ink that reads "Dawn Boucher".

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Dawn Boucher  
Administrative Law Judge

January 8, 2021  
Decision Dated and Mailed

db/scn

**Note to Claimant**

- This decision determines you are not eligible for regular unemployment insurance benefits funded by the State of Iowa 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 funded by the State of Iowa under state law, you may qualify for benefits under the Federal Pandemic Unemployment Assistance (“PUA”) section of the Coronavirus Aid, Relief, and Economic Security Act (“Cares Act”) that discusses eligibility for claimants who are unemployed due to the Coronavirus.
- **You will need to apply for PUA to determine your eligibility under the program.**  
For additional information on how to apply for PUA go to:  
<https://www.iowaworkforcedevelopment.gov/pua-information>.
- If you are denied regular unemployment insurance benefits funded by the State of Iowa and wish to apply for PUA, please visit:  
<https://www.iowaworkforcedevelopment.gov/pua-information> and scroll down to “Submit Proof Here.” You will fill out the questionnaire regarding the reason you are not working and upload a picture or copy of your fact-finding decision. Your claim will be reviewed for PUA eligibility. If you are eligible for PUA, you will also be eligible for Federal Pandemic Unemployment Compensation (FPUC) until the program expires. Back payments PUA benefits may automatically be used to repay any overpayment of state benefits. If this does not occur on your claim, you may repay any overpayment by visiting:  
<https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment-and-recovery>.
- If you have applied and have been approved for PUA benefits, this decision will **not** negatively affect your entitlement to PUA benefits.