

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CATHERINE L SULLIVAN
Claimant

A STEP IN THYME INC
Employer

APPEAL NO. 21A-UI-17104-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

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

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

The claimant, Catherine Sullivan, filed a timely appeal from the July 28, 2021, reference 01, decision that denied benefits for the period of April 26, 2020 through July 18, 2020, based on the deputy's conclusion that the claimant did not accept and offer of work with A Step in Thyme, Inc. during a period of shutdown, when a willingness to work would have led to t actual employment during that period. After due notice was issued, a hearing was held on September 24, 2021. Claimant participated. Kathy Bogenrief represented the employer. The parties waived 10-day notice of the hearing. Exhibit A was received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX and WAGE-A.

ISSUES:

Whether the claimant was able to work and available for work during the period of April 26, 2020 through July 18, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant established an original claim for benefits that was effective March 22, 2020. Iowa Workforce Development set the weekly benefit amount at \$216.00. The claimant made weekly claims or each of the weeks between March 22, 2020 and July 18, 2020. The claimant received \$216.00 in regular state benefits and \$600.00 in Federal Pandemic Unemployment Compensation (FPUC) for each benefit week between March 22, 2020 and July 18, 2020.

At the time the claimant established her claim for benefits, the claimant was employed by A Step In Thyme, Inc., as a full-time sales person and receptionist. The employer is a florist. The claimant contend to work until on or about March 22, 2020. The claimant's regular work hours were 8:00 a.m. to 5:00 p.m., Monday through Friday. The claimant's wage was \$9.25 an hour. Kathy Bogenrief is the business owner and was the claimant's immediate supervisor.

On March 17, 2020, Governor Reynold's issued a State of Public Health Disaster Emergency proclamation, in which the governor directed non-essential retail businesses to closed their

doors to in-person interaction with the public to slow community spread of COVID-19. The employer locked its doors, but continued to transact business by telephone. Based on a drop off in business, and in light of the claimant's concern about continuing to work during the COVID-19 pandemic, the employer and the claimant agreed that the claimant would go off work temporarily.

As the busy Mother's Day holiday approached, the employer had a need for the claimant to return to the full-time employment. The employer at that point had ongoing full-time employment available for the claimant. On or about April 26, 2020, the employer called and spoke with the claimant to request that the claimant return to the employment. The claimant indicated that she was not comfortable with returning to the employment at that time. The claimant was 66 years old at the time. The claimant had heeded information issued by the Centers for Disease Control. The claimant had some allergies. The claimant's doctor had not advised the claimant to go off work, but later affirmed the claimant's decision to remain off work. The employer had continued to keep the doors locked and business has shifted to taking phone orders for flowers that the employer's deliver driver would then deliver to customers. The employer had sufficient work space for employees to distance themselves in the workplace. The delivery driver wore a mask, but the employer did not require other staff to wear a mask. The employer sanitized the workplace on a daily basis.

The claimant discontinued her claim for unemployment insurance benefits after she made a weekly claim for July 18, 2020. The claimant discontinued the claim after the employer contacted her and stated the employer needed the claimant to return to the employment or the employer would have to find a replacement for the claimant. The claimant advised the employer that she would not be returning. The claimant had continued to sequester at home throughout the time that her unemployment insurance claim was active.

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(41) provides:

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

(41) The claimant became temporarily unemployed, but was not available for work with the employer that temporarily laid the claimant off. The evidence must establish that the claimant had a choice to work, and that the willingness to work would have led to actual employment in suitable work during the weeks the employer temporarily suspended operations.

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.

The evidence in the record establishes that the claimant was temporarily unemployed during the period of March 22, 2020 through the benefit week that ended April 25, 2020. On or about April 26, 2020, the employer recalled the claimant to suitable full-time work that was the same work the claimant had performed prior to the temporary layoff, except that the employer had taken additional measures to response to the COVID-19 pandemic. The weight of the evidence establishes that employer had ongoing full-time work available to the claimant throughout the

period of April 26, 2020 through July 18, 2020. The claimant elected not to make herself available for work with her employer during that period. Accordingly, the claimant did not meet the availability requirement and is not eligible for benefits for the period of April 26, 2020 through July 18, 2020.

DECISION:

The July 28, 2021, reference 01, decision is affirmed. The claimant was not available for work during the period of April 26, 2020 through July 18, 2020 and is not eligible or benefits for that period.



James E. Timberland
Administrative Law Judge

September 16, 2021
Decision Dated and Mailed

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