

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MELISSA WETTERHAN
Claimant

**MERCY HEALTH SERVICES-IOWA
CORPORATION**
Employer

APPEAL 20A-UI-10396-JC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/21/20
Claimant: Respondent (2R)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The employer/appellant filed an appeal from the August 21, 2020 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on October 14, 2020. The claimant did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing. The employer was represented by Jennifer Pierce. Beckie Wahlberg testified for the employer.

The administrative law judge took official notice of the administrative records. Employer Exhibits A-D were admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the claimant able to work and available for work effective June 20, 2020?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time CNA. She last worked March 5, 2020. She then went on a leave of absence due to a personal injury. Her leave of absence ended June 18, 2020.

Claimant remained off work due to medical restrictions imposed by her treating physician. Claimant was unable to perform her job duties due to the restrictions, which included a limit of lifting and her lacking strength to push, lift and grip. Claimant separated from employment effective September 11, 2020, and that separation has not yet been addressed by the Benefits Bureau.

On September 10, 2020, claimant was released to return to work with the restriction that she could not perform any CNA work. Claimant did not participate in the hearing to establish that

she was able and available for work after establishing her claim with an effective date of June 20, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is not able to and available for work effective June 20, 2020.

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 96.1A, 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 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 Admin. Code r. 871-24.23(35) provides:

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

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

For an unemployed individual to be eligible to receive benefits, she must be able to work, available for work, and actively seeking work as required by the unemployment insurance law. Iowa Code § 96.4(3). The burden is on the claimant to establish that she is able and available for work within the meaning of the statute. Iowa Code § 96.6(2); Iowa Admin. Code r. 871-24.22; *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979).

In this case, the evidence fails to establish the claimant is able to and available for work as defined by the unemployment insurance law. The claimant did not appear for the hearing and meet her burden of proof to show she was able and available for work after June 20, 2020.

The issue of the claimant's permanent separation from employment effective September 11, 2020 is remanded to the Benefits Bureau for an initial investigation and decision.

Note to Claimant: This decision denies benefits. *If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.* 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. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at

<https://www.iowaworkforcedevelopment.gov/pua-information>.

DECISION:

The unemployment insurance decision dated August 21, 2020, (reference 01) is reversed. The claimant is not able and available for work effective June 1, 2020. Regular unemployment insurance benefits funded by the state of Iowa are denied until such time as the claimant is able to and available for work.

REMANDED:

The issue of the claimant's permanent separation from employment effective September 11, 2020 is remanded to the Benefits Bureau for an initial investigation and decision.



Jennifer L. Beckman
Administrative Law Judge
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Iowa Workforce Development
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October 16, 2020

Decision Dated and Mailed

jlb/sam