

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LINDA GROSS
Claimant

APPEAL NO. 21A-UI-03656-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LUTHER CARE SERVICES
Employer

OC: 03/29/20
Claimant: Appellant (5)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code section 96.1A(37) – Temporary & Partial Unemployment

STATEMENT OF THE CASE:

Linda Gross filed a timely appeal from the January 15, 2021, reference 01, decision that denied regular benefits effective March 29, 2020, based on the deputy's conclusion that Ms. Gross 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 March 17, 2021. Ms. Gross participated. Deb Nowachek represented the employer. Exhibit A, the appeal form, was received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO and KPYX.

ISSUES:

Whether the claimant was able to work and available for work during the period of March 29, 2020 through July 18, 2020.

Whether the claimant was partially and/or temporarily unemployed during the period of March 29, 2020 through July 18, 2020.

Whether the employer's account may be charged for benefits for the period of March 29, 2020 through July 18, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Linda Gross was employed by Luther Care Services as a full-time Dietary Aide at Gardens at Luther Park until December 31, 2020. Ms. Gross' work hours were 7:00 a.m. to 3:30 p.m. five days a week. Ms. Gross' hourly wage was \$12.99. Ms. Gross would ordinarily work about 39 hours per week.

Ms. Gross was a full-time employee at the time she requested and commenced a leave of absence that was effective April 6, 2020. Ms. Gross has custody of five grandchildren, ages 14, 12, 7, 4 and 1 years old. Ms. Gross commenced the leave of absence in response to Des Moines schools discontinuing in-person classes and in response to a daycare closure. The closures were due to COVID-19. The employer approved Ms. Gross' need for a leave of absence. Ms. Gross returned to the full-time employment on July 1, 2020.

With the assistance of a social worker, Ms. Gross established an original claim for benefits that Iowa Workforce Development deemed effective March 29, 2020. Iowa Workforce Development set the weekly benefit amount for regular benefits at \$371.00. Ms. Gross made weekly claims for each of the weeks between March 29, 2020 and July 18, 2020. Ms. Gross worked her full-time hours during the week that ended April 4, 2020 and earned full-time wages. Ms. Gross was completely off work during the weeks between April 5, 2020 and June 27, 2020. In connection with Ms. Gross' returned to work on Wednesday, July 1, 2020, Ms. Gross worked 30.75 hours during the week that ended July 4, 2020. Ms. Gross earned \$399.44 in gross wages for that week. Ms. Gross worked 34 hours during the week that ended July 11 and 34.55 hours during the week that ended July 18, 2020. Ms. Gross earned \$441.66 and \$448.80 for those respective weeks. At all relevant times, the employer had full-time work available for Ms. Gross. During the weeks that ended July 11 and July 18, the employer allowed employees to leave early once their work was done, if the employee desired to leave early. The employer did not require employees to leave early. Ms. Gross elected to leave work between 2:00 and 2:30 p.m. during those two weeks and that is the basis for the reduced work hours during those weeks. Ms. Gross discontinued her claim for benefits following the week that ended July 18, 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) and (23) 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.

...

(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 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.

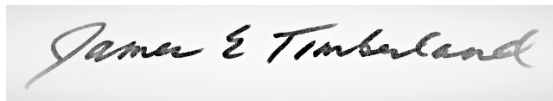
If a claimant individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. Iowa Code section 96.7(2)(a)(2)(a).

Ms. Gross is not eligible for regular unemployment insurance benefits for the period of March 29, 2020 through July 18, 2020. During the week that ended April 4, 2020, Ms. Gross worked full-time and earned full-time wages. Ms. Gross was not unemployed that week and, therefore, did not meet the unemployment insurance "availability" requirement. During the period of April 5, 2020 through June 27, 2020, Ms. Gross was on a leave of absence that she requested and that the employer approved, was voluntarily unavailable and was not available

for work. During the weeks that ended July 4, July 11 and July 18, 2020, Ms. Gross worked voluntarily reduced hours and earned wages that exceeded her weekly benefit amount by more than \$15.00. Ms. Gross cannot be considered partially unemployed for any those three weeks.

DECISION:

The January 15, 2021, reference 01, decision is modified as follows. The claimant is not eligible for regular unemployment insurance benefits for the period of March 29, 2020 through July 18, 2020. During the week that ended April 4, 2020, the claimant was not unemployed and, therefore, did not meet the unemployment insurance "availability" requirement. During the period of April 5, 2020 through June 27, 2020, the claimant was on a leave of absence that she requested and that the employer approved, was voluntarily unavailable and was not available for work. During the weeks that ended July 4, July 11 and July 18, 2020, the claimant worked voluntarily reduced hours, earned wages that exceeded her weekly benefit amount by more than \$15.00, and was not partially unemployed within the meaning of the law.



James E. Timberland
Administrative Law Judge

March 18, 2021
Decision Dated and Mailed

jet/scn

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits 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 under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA for the affected period, you will be required to repay the benefits you have received.**
- This decision determines you have been overpaid FPUC under the CARES Act. 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. **Additionally, instructions for requesting a waiver of this overpayment can be found at <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment-and-recovery>. If this decision becomes final and you are not eligible for a waiver, you will have to repay the benefits you received.**