

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DEBRA HOLMES
Claimant

VA CENTRAL IA HEALTHCARE
Employer

APPEAL NO. 20A-UI-03028-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Respondent (5/R)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 7, 2020, reference 01, decision that allowed benefits effective March 15, 2020, provided the claimant was otherwise eligible, and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was able to work and available for work, but that the employer was not providing the same employment as existed in the base period. After due notice was issued, a hearing was held on May 6, 2020. Claimant Debra Holmes participated. Jonah Krause, Employee Relations Specialist, represented the employer. Exhibits 1, 2 and 3 into evidence. The administrative law judge took official notice of the Agency's administrative record of the claimant's weekly claims (KCCO) and of benefits disbursed to the claimant (DBRO).

ISSUES:

Whether the claimant has been able to work and available for work since establishing her claim for benefits.

Whether the employer's account may be charged for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Since claimant Debra Holmes established the original claim effective March 15, 2020, she has been on a medical leave of absence from her employment with Veterans Administration Central Iowa Healthcare in Des Moines, where she is employed as a full-time Certified Nursing Assistant in a dementia unit. Ms. Holmes generally worked two shifts per week that would start at 11:30 a.m. and two shifts per week that would start at 3:30 p.m. All four shifts would end at midnight. The dementia unit is connected to the main VA hospital in Des Moines. Natasha Merten, Nurse Manager, is Ms. Holmes immediate supervisor. Ms. Holmes last performed work for the employer on March 12, 2020. Ms. Holmes exhausted all available paid leave benefits prior to filing her claim for unemployment insurance benefits.

Ms. Holmes is a cancer survivor. Ms. Holmes' cancer history includes surgery to have 60 percent of her liver removed. Ms. Holmes continues to have follow-up appointments with her

oncologist, but is not currently receiving chemotherapy or radiology and is not taking any immunosuppressant medications. Ms. Holmes' post-cancer health status includes a low blood platelet count and an enlarged spleen.

At the time of Ms. Holmes March 18, 2020 follow up appointment with her oncologist, the oncologist provided Ms. Holmes with a medical note that indicated she was under the oncologist's care, was immune-compromised, was at high risk in connection with the COVID-19 pandemic and needed to be quarantined at home for at least two weeks. Ms. Holmes promptly provided the medical note to the employer and the employer approved Ms. Holmes for a two-week medical leave of absence.

Ms. Holmes did not return to work at the end of the two-week medical leave of absence. On March 27, 2020, Ms. Holmes' oncologist provided the employer with a second medical excuse that stated as follows: "Please continue to have Debra off work for an additional 2 wks due to the Covid 19 outbreak and her altered immunity." The medical excuse indicated a diagnosis of "C18.2."

Ms. Holmes also suffers from asthma. On March 30, 2020, the doctor who treats Ms. Holmes for her asthma provided the employer with a letter that stated Ms. Holmes was immune-compromised based on her asthma diagnosis.

On March 30, 2020, Ms. Merten spoke with Ms. Holmes by telephone. Ms. Merten told Ms. Holmes that the employer had arranged an alternative work assignment for Ms. Holmes wherein Ms. Holmes would perform administrative clerical work in an office environment not located on the VA hospital campus. The office in question was located three to five miles from the VA hospital complex, near Merle Hay Mall. The proposed work duties would not include contact with the public. The office has an open floorplan. Social distancing would apply to the workers in the office. The work hours would be 8:00 a.m. to 4:30 p.m. Ms. Holmes declined the offer of alternative work and advised that she would only be willing to perform work from home. Ms. Holmes response was consistent with her physician's determination that needed to quarantine at home due to her immune-compromised health status. The employer did not issue any ultimatum that would require Ms. Holmes to choose between accepting the proposed alternative work duties and separating from the employment. Both parties continued to view Ms. Holmes as a current VA employee as of the May 6, 2020 appeal hearing.

On April 8, 2020, Melissa Lake, Human Resources Specialist, notified Ms. Holmes by email that she was approved for continuous leave under the Family and Medical Leave Act (FMLA) for the period of March 30, 2020 through April 30, 2020, based on medical documentation signed by Ms. Holmes' doctor on April 3, 2020. In the same correspondence, Ms. Lake indicated that Ms. Holmes was "Also approved for episodic flare-ups up to 1 time a month, up to 1 day per episode" for the period of May 1, 2020 through June 1, 2020. Ms. Holmes promptly confirmed receipt of the FMLA approval. As part of the same email communication chain, Ms. Merten asked Ms. Holmes whether she was planning to use the FMLA leave that was approved through April 30, 2020. Ms. Holmes promptly confirmed that was her intention. Ms. Holmes added, "I look forward to coming [sic] back to work in June." Ms. Holmes promptly submitted another email to the employer in which she stated the reference to returning in June was in error and that she meant to say that she would be returning in May.

As of the May 6, 2020 appeal hearing, Ms. Holmes had not returned to the employment.

Ms. Holmes has made weekly unemployment insurance claims since she established the original claim for benefits that was effective March 15, 2020. Iowa Workforce Development set

Ms. Holmes weekly benefit amount for regular state benefits at \$18.00 and her weekly benefit amount based on the federal employment at \$481.00. For the benefit week that ended March 21, 2020, Ms. Holmes reported that she was laid off and that she had \$294.00 in wages. For each of the six subsequently claim weeks, through the benefit week that ended May 2, 2020, Ms. Holmes reported that she was not working and has no wages to report. Iowa Workforce Development has disbursed both state and federal benefits to Ms. Holmes for each benefit week. These amounts do not include the \$600.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits added to Ms. Holmes' claim.

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 Workforce Development has decided and given public notice that workers who are immune-compromised and who have been advised by a physician to self-quarantine due to the COVID-19 pandemic will not be disqualified for benefits, provided they meet all other eligibility requirements. See COVID-19 Scenarios & Benefits Available at www.iowaWorkforceDevelopment.gov. This decision and public announcement effectively carves out a substantial, temporary COVID-19-related exception to the able and available requirements set forth in Iowa Code section 96.4(3) and at Iowa Administrative Code rules 871-24.22 and 871-24.23. This carve-out exception to the able and available requirements mirrors a similar carve-out set forth at Section 2102(a)(3)(A)(ii)(i) of the CARES Act, PL, 116-136. Under this rubric, Ms. Holmes, a worker who is immune-compromised, and who was advised by her physician to quarantine at home, would not be disqualified for benefits for that period during which her physician indicated she needed to self-quarantine. According to the evidence in the record, that period includes the March 15, 2020 original claim date through April 30, 2020, or rather, through the benefit week that ended May 2, 2020. For these reasons, the administrative law judge concludes that Ms. Holmes is eligible for benefits for the period of March 15, 2020 through the benefit week that ended May 2, 2020, provided she meets all other eligibility requirements.

Iowa Workforce Development has also decided and given public notice, with express limits, that employers whose tax contributions fund the Iowa Unemployment Insurance Trust Fund will not be charged for benefits for claims made by their employees due to Covid-19 related unemployment. See IWD Covid-19 Information Page, Attention Employers at www.iowaWorkforceDevelopment.gov. VA Central Iowa Healthcare, as part of the federal Veterans Administration agency, would not fall into that category of employers whose tax contributions fund the Iowa Unemployment Insurance Trust Fund and would instead be subject to Iowa Code section 96.20, wherein the federal government has agreed to reimburse Iowa Workforce Development for benefits disbursed to employees of the federal agency.

Accordingly, the VA's account may be assessed for benefits paid to Ms. Holmes that are based on the federal employment.

This matter will be remanded to the Benefits Bureau for determination of whether Ms. Holmes continues to be able to work and available for work within the meaning of the law for the period beginning May 3, 2020.

DECISION:

The April 7, 2020, reference 01, decision is modified without impact on the claimant's eligibility or the employer's liability. Based on the Covid-19 carve-out to the able and available requirements, the claimant met the able and available requirements for the period of March 15, 2020 through May 2, 2020 and is eligible for benefits for that period, provided she meets all other eligibility requirements. The federal employer's account may be charged for benefits paid to the claimant for the period of March 15, 2020 through May 2, 2020.

This matter is remanded to the Benefits Bureau for determination of whether the claimant continues to be able to work and available for work within the meaning of the law for the period beginning May 3, 2020.



James E. Timberland
Administrative Law Judge

May 11, 2020
Decision Dated and Mailed

jet/scn