

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DEVIN MAHONEY
Claimant

APPEAL NO. 20A-UI-05727-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DOLGENCORP LLC
Employer

OC: 04/05/20
Claimant: Appellant (2)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Devin Mahoney filed a timely appeal from the June 4, 2020, reference 01, decision that denied benefits effective April 5, 2020, based on the deputy's conclusion that Ms. Mahoney was on a leave of absence that she requested and the employer approved, that she was voluntarily unemployed, and that she was not available for work. After due notice was issued, a hearing was held on July 9, 2020. Ms. Mahoney participated. The employer did not comply with the hearing notice instructions to register a telephone number for the hearing and did not participate. 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. of wages reported by or for the claimant and benefits disbursed to the claimant (DBRO).

ISSUES:

Whether the claimant was able to work and available for work within the meaning of the law during the period of April 5, 2020 through May 23, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Devin Mahoney established an original claim for benefits that was effective April 5, 2020. Iowa Workforce Development set her weekly benefit amount at \$81.00. Ms. Mahoney made weekly claims for seven weeks between April 5, 2020 and May 23, 2020 and received \$81.00 in regular benefits for each of those weeks. IWD also paid Ms. Mahoney \$600.00 in Federal Pandemic Unemployment Compensation for each of those same seven weeks. The FPUC benefits totaled \$4,200.00. Ms. Mahoney ceased making weekly claims following the benefit week that ended May 23, 2020.

Until March 2020, Ms. Mahoney also worked part-time at Dollar General. Ms. Mahoney would be scheduled five hours a week at Dollar General and would at times pick up shifts. Ms. Mahoney's wage at Dollar General was \$10.00. Ms. Mahoney's primary occupation is as an independent contractor for a social services agency. Ms. Mahoney filed her claim for unemployment insurance benefits in response to the reduction in available work associated with her independent contracting position.

In March 2020, Dollar General Store Manager Becky Craig urged Ms. Mahoney to take time away from work in connection with the COVID-19 pandemic. Ms. Mahoney had not been planning to discontinue working at the Dollar General. Ms. Craig reasoned that it did not make sense for Ms. Mahoney to come to work five hours a week and risk potential exposure to COVID-19 at a time when she was not working outside her home in her primary occupation. At Ms. Craig's urging, Ms. Mahoney commenced a period of approved leave. Ms. Craig urged Ms. Mahoney to take whatever time she needed. Initially the leave period was two weeks. Thereafter it was extended by agreement on a week-by-week basis. On or about May 1, 2020, Ms. Craig notified Ms. Mahoney that her employment had been terminated due to Ms. Craig being away from work for so long. Ms. Mahoney had at all relevant times been prepared to report for work at Dollar General, if they employer indicated a need for her services. The employer had not indicated such need.

Ms. Mahoney is a parent. Ms. Mahoney's children include a 12-year-old son who four years ago was diagnosed with terminal cancer. The child no longer receives therapeutic treatment and has received hospice services for the last two years. The child attends school when school is in session. Ms. Mahoney's 12-year-old and three-year-old are usually cared for by Ms. Mahoney's mother when Ms. Mahoney is at work. The COVID-19 pandemic and associated March 2020 school closure did not interfere with Ms. Mahoney's childcare arrangement and her mother remained available to provide childcare services as needed.

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) 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.

An individual shall be deemed temporarily unemployed if the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job if the individual's employment, although temporarily suspended, has not been terminated. Iowa Code section 96.19(38)(c).

The weight of the evidence establishes that Ms. Mahoney has been able to work and available for work since April 5, 2020. Ms. Mahoney was not planning to go off work from her part-time Dollar General position and did not request a leave of absence. She only went off work because the employer urged her to do so. Ms. Mahoney's time away from work was more in the nature of a temporary layoff than a voluntary leave of absence initiated by Ms. Mahoney. While Ms. Mahoney was off work, she remained available to perform work for the employer, but the employer continued to communicate Ms. Mahoney's services were not needed. This arrangement ended on May 1, 2020, when the employer terminated the employment. Ms. Mahoney is eligible for benefits for the period beginning April 5, 2020, provided she is otherwise eligible.

DECISION:

The June 4, 2020, reference 01, is reversed. The claimant was temporarily laid off in March 2020 and continued on temporary layoff until May 1, 2020. The claimant has been able and available for work since establishing her claim for benefits. The claimant is eligible for benefits for the period beginning April 5, 2020, provided she meets all other eligibility requirements.



James E. Timberland
Administrative Law Judge

August 6, 2020
Decision Dated and Mailed

jet/scn