

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JESSICA D HOLMES

Claimant

PRIME TIME HEALTHCARE LLC

Employer

APPEAL NO. 21A-UI-01120-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/20/20

Claimant: Appellant (1)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the December 1, 2020, reference 01, decision that denied benefits effective September 20, 2020, based on the deputy's conclusion that the claimant was unduly restricting her availability for work and did not meet the availability requirement. After due notice was issued, a hearing was held on February 15, 2021. Claimant participated. The employer did not provide a telephone number for the hearing and did not participate. Exhibits A and B were received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, and WAGE-A.

ISSUES:

Whether the claimant was able to work and available for work for the period beginning September 20, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant is a Mississippi resident who performed work in Iowa during her base period. When the claimant exhausted benefits in Mississippi, the claimant established an Iowa combined wage claim that was effective September 20, 2020. For the last 16 years, the claimant has worked as a Certified Nursing Assistant (CNA). During the base period, the claimant worked only as a CNA and in a number of CNA temporary work assignments, primarily in Iowa. The claimant earlier worked in other service positions, such as clerking at a convenience store and working in fast-food restaurants.

The claimant has a seven-year-old child with reactive airway disease who requires nebulizer treatments. The claimant is the primary caregiver. The child is at home full-time and participating in virtual learning. Since the claimant established the Iowa combined wage claim, the claimant has been unable to accept insured work outside her home due to a lack of childcare for her seven year old. The type of service work the claimant has historically performed cannot be performed from the claimant's home. The person who used to care for the child while the claimant was working out of state contracted COVID-19. That caregiver recovered from COVID-19, but the claimant is still concerned that caregiver may expose the

claimant's child to COVID-19 due to the presence of antibodies. The claimant has applied for fast-food positions and convenience store positions in her town and in surrounding communities, but has not been in a position to accept that work or any other until her childcare situation is resolved. The claimant has not kept a work search log.

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 provides, in relevant part, as follows:

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

24.23(8) Where availability for work is unduly limited because of not having made adequate arrangements for child care.

The claimant has not been available for work within the meaning of the law since she established the original claim for benefits that was effective September 20, 2020. The claimant's unavailability for work is based on a lack of child care. Because the

claimant's does not meet the availability requirement, she is not eligible for regular benefits. Benefits are denied for the period beginning September 20, 2020.

Even though claimant is not eligible for regular unemployment insurance benefits under state law, the claimant may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA). The administrative law judge encourages the claimant to pursue that opportunity in light of the need for the claimant to assist her child with virtual learning during the COVID-19 pandemic.

DECISION:

The December 1, 2020, reference 01, decision is affirmed. The claimant has not been available for work within the meaning of the law since establishing her claim for benefits. Accordingly, benefits are denied for the period beginning September 20, 2020.



James E. Timberland
Administrative Law Judge

February 25, 2021
Decision Dated and Mailed

jet/kmj

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>.