

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

WENDY J FOOTE
Claimant

ALLEN MEMORIAL HOSPITAL
Employer

APPEAL 20A-UI-07497-S1-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/19/20
Claimant: Appellant (4)

Iowa Code § 96.4-3 – Able and Available
871 IAC 24.23(10) – Voluntary Leave of Absence

STATEMENT OF THE CASE:

Wendy Foote (claimant) appealed a representative's June 30, 2020, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits as of April 19, 2020, because she was on a leave of absence granted by Allen Memorial Hospital (employer) at the claimant's request. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for August 11, 2020. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing. The administrative law judge took official notice of the administrative file.

ISSUES:

The issue is whether the claimant is eligible for total or partial unemployment benefits, still employed at the same hours and wages, whether the claimant is able and available for work and/or whether the employer's account is subject to charge.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on August 3, 1998, as a full-time lead mammographer. She was on short-term disability from March 6, 2020, through April 26, 2020, for a non-work-related injury. She was paid sixty-percent of her wages. On April 27, 2020, the claimant was released by her doctor to return to work without restrictions.

The claimant filed for unemployment insurance benefits with an effective date of April 19, 2020. Her weekly benefit amount was determined to be \$481.00. For the week ending April 25, 2020, the claimant reported income of \$500.00 and received no unemployment insurance benefits. The employer furloughed the claimant from April 27, 2020, through May 4, 2020. There was no work available for her. The claimant received benefits of \$481.00 for the week ending May 2, 2020. She also received \$600.00 in Federal Pandemic Unemployment Compensation for the week ending May 2, 2020.

The employer assigned the claimant to work at John Deere from May 5, 2020, through June 1, 2020. She returned to work at her regular location on June 2, 2020.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.19(38) 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.

A worker is not monetarily eligible to receive unemployment insurance benefits if she receives wages equal to or greater than her weekly benefit amount plus fifteen dollars. The claimant's weekly benefit amount is \$481.00. Her weekly benefit amount plus fifteen dollars is \$496.00. For the week ending April 25, 2020, the claimant reported earnings of \$500.00. This was greater than \$496.00. She was not monetarily eligible to receive unemployment insurance benefits for the week ending April 25, 2020.

The employer furloughed the claimant for the one-week period ending May 2, 2020. There was no work available for her. When a worker is unemployed for a period, not to exceed four weeks, the worker is deemed to be temporarily unemployed. The claimant was temporarily unemployed for the week ending May 2, 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:

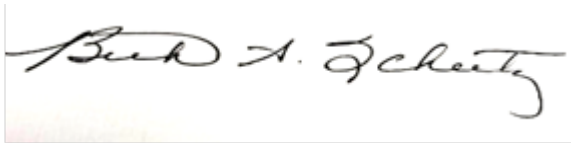
3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (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".

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). There has been no evidence offered that the claimant is not able and available for work for the week ending May 2, 2020. Benefits are allowed for the week ending May 2, 2020.

DECISION:

The June 30, 2020, (reference 01) unemployment insurance decision is modified in favor of the appellant. The claimant was temporarily unemployed for the week ending May 2, 2020. She was able and available for work. Benefits are allowed for the week ending May 2, 2020.



Beth A. Scheetz
Administrative Law Judge
Unemployment Insurance Appeals Bureau
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August 18, 2020
Decision Dated and Mailed

bas/scn