

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**KATHERINE M PERKINS**  
Claimant

**JULIE MEYERS, D.C., P.L.C.**  
Employer

**APPEAL 20A-UI-13793-DZ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/12/20**  
**Claimant: Appellant (1R)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.23(10) – Leave of Absence

**STATEMENT OF THE CASE:**

Katherine M Perkins, the claimant/appellant, filed an appeal from the October 21, 2020, (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on December 31, 2020. Ms. Perkins participated and testified. The employer participated through Julie Meyers, owner and chiropractor. Claimant's Exhibit's A and B and Employer's Exhibit 1 were admitted into evidence. Official notice was taken of the administrative record.

**ISSUES:**

Is Ms. Perkins able to and available for work?  
Is Ms. Perkins on a voluntary leave of absence?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Perkins began working for the employer, a chiropractic clinic, on November 26, 2019. She worked as a part-time massage therapist. Her last day of work was July 6, 2020.

In March 2020, the United States declared a public health emergency because of the COVID 19 pandemic. The morning of July 1, the employer informed Ms. Perkins that Ms. Meyers had been exposed to COVID-19. Ms. Perkins went to work and learned that the person who Ms. Peters has been exposed to have been in the office the week prior and that Ms. Perkins had the same symptoms as the person to whom Ms. Meyers was exposed. The employer encouraged Ms. Perkins to get tested for COVID-19. Ms. Perkins did not get tested for COVID-19.

Due to Ms. Meyers' exposure, many of the appointments that had been scheduled the week of June 29-July 3 and the week of July 6-10 were cancelled. The employer was closed on July 2. Ms. Perkins called in on July 3 due to her concern about COVID-19. On July 6, Ms. Perkins went to work and learned that another massage therapist has been tested for COVID-19 but had not yet received the results. Ms. Perkins was concerned that the other therapist wasn't self-

quarantining. That same day, Ms. Meyers sent a group text, which included Ms. Perkins, informed staff that she had tested negative for COVID-19 and will be returning to work on July 15. Ms. Perkins completed her shift and left.

The evening of July 7, Bret Grimes, another chiropractor, called Ms. Perkins to talk with her about her concerns. The end result of the conversation was that the Ms. Perkins and the employer agreed that Ms. Perkins would take time off of work due to her concerns about the pandemic. Ms. Perkins filed her initial claim with an effective date of July 12, 2020.

Ms. Perkins and Ms. Meyers spoke on July 13, 14 and 20. On July 20, Ms. Meyers asked Ms. Perkins when she would return to work. Ms. Perkins replied that she wasn't comfortable returning to work while the number of COVID-19 cases continued to rise and as long as the employer was not, in her view, following public health guidelines. In response, Ms. Meyers told Ms. Perkins that she would not be scheduled until further notice.

On August 14, Ms. Perkins texted Ms. Meyers and asked for a call back. Ms. Meyers responded via text on August 19, when she returned from vacation, informing Ms. Perkins of her availability to talk. Ms. Perkins did not respond.

The issue of Ms. Perkins' separation from employment with this employer has not yet been determined by the Benefits Bureau of Iowa Workforce Development.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, this administrative law judge concludes that claimant is not able and available for work effective April 26, 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".

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.

In this case, Ms. Perkins and the employer agreed on July 7, 2020 that she would take time off of work due to her concerns about the pandemic and due to her concern that the employer wasn't following public health guidelines related to the pandemic. Ms. Perkins' concerns are understandable. However, Ms. Perkins has not established that she was able to and available for work effective July 12, 2020, her original claim date, even under the United States Department of Labor's guidance to flexibly interpret this requirement. See Unemployment Insurance Program Letter No. 10-20. Therefore, Ms. Perkins is not eligible for regular, state-funded unemployment insurance benefits from the effective date of her claim.

Even though Ms. Perkins is not eligible for regular unemployment insurance benefits under state law, she 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) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed.

**DECISION:**

The October 21 2020, (reference 02) unemployment insurance decision is affirmed. Ms. Perkins is not able to and available for work effective July 12, 2020, and regular, state-funded unemployment insurance benefits are denied.

**REMAND:**

The issue of Ms. Perkins' separation from employment with this employer is remanded to the Benefits Bureau of Iowa Workforce Development for investigation and determination.

**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, you may be r**



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Daniel Zeno  
Administrative Law Judge

January 28, 2021  
Decision Dated and Mailed

dz/scn