

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KRISTI A REED
Claimant

DOLLAR TREE STORES INC
Employer

APPEAL 20A-UI-12717-S1-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/02/20
Claimant: Appellant (1/R)

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Availability Disqualifications
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

Kristi Reed (claimant) appealed a representative's October 9, 2020, decision (reference 06) that denied benefits as of July 5, 2020, based on her continued employment with Dollar Tree Stores (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 11, 2020. The claimant was represented by Nadine Stille, Attorney at Law, and participated personally. The employer participated by Joseph McEnulty, District Manager.

20A-UI-12716.S1 and 20A-UI-12717.S1 were heard at the same time. The claimant offered and Exhibits A and B were received into evidence. 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 May 28, 2020, as a full-time operations assistant manager at \$12.00 per hour. She had been diagnosed with post-traumatic stress disorder due to an armed robbery she encountered during previous employment. The employer was unaware of this at the time she was hired. The claimant also had medical issues with her foot. The employer accommodated her medical restrictions.

On June 24, 2020, the claimant decided to put a "No Weapons" sign in the store window. The employer prohibits all signs in the windows. When the district manager visited, he removed all non-sanctioned signs, including the claimants.

On June 17, 2020, the claimant was working at the cash register when she saw a customer with, what she thought was, a gun in his pocket. This triggered an episode of crying, hysteria, and hyperventilation for the claimant. She did not ask to go home and continued working.

The claimant wrote a letter on June 18, 2020 to the district manager and her co-worker. (Exhibit B) It noted there was a customer with a gun in his pocket and stated she was a victim of a crime. The claimant said, "Something needs to be done or I need to find another job....I am not yet certain what the solution would be, since I need to be employed". The customer may have re-entered the store on July 11, 2020. The claimant asked her co-worker to have two people at the register at all times. The district manager was not informed of the request.

On July 26, 2020, the claimant told the store manager she had to leave work early because she was having foot issues. The store manager accommodated her request. Later on July 26, 2020, the claimant sent the employer a text that said, "I am making a super hard decision. I plan to turn in my keys and quit. Not only because of health reasons, I can barely put weight on my foot and my PTSD. I need to find a sit down job. My feet and knees will be much happier as will I. I hate making this decision, but I just can't find a choice". (Exhibit A) The store manager instructed her to turn in the keys before close that night. Continued work was available with the employer had the claimant not resigned.

The claimant did not indicate in her resignation text that she quit because she felt harassed and bullied by her store manager and general manager when they did nothing about customers carrying guns.

For the benefit week ending June 6, 2020, the claimant reported \$590.00 income and received \$00.00 in unemployment insurance benefits and \$600.00 in Federal Pandemic Unemployment Compensation. The employer paid her \$79.00.

For the benefit week ending June 13, 2020, the claimant reported \$00.00 income and received \$289.00 in unemployment insurance benefits and \$600.00 in Federal Pandemic Unemployment Compensation. The employer paid her \$355.00.

For the benefit week ending June 20, 2020, the claimant reported \$300.00 income and received \$61.00 in unemployment insurance benefits and \$600.00 in Federal Pandemic Unemployment Compensation. The employer paid her \$449.00.

For the benefit week ending June 27, 2020, the claimant reported \$300.00 income and received \$61.00 in unemployment insurance benefits and \$600.00 in Federal Pandemic Unemployment Compensation. The employer paid her \$453.00.

For the benefit week ending July 4, 2020, the claimant reported \$850.00 income and received \$00.00 in unemployment insurance benefits and \$00.00 in Federal Pandemic Unemployment Compensation. The employer paid her \$473.00.

For the benefit week ending July 11, 2020, the claimant reported \$200.00 income and received \$161.00 in unemployment insurance benefits and \$600.00 in Federal Pandemic Unemployment Compensation. The employer paid her \$379.00.

For the benefit week ending July 18, 2020, the claimant reported \$280.00 income and received \$81.00 in unemployment insurance benefits and \$600.00 in Federal Pandemic Unemployment Compensation. The employer paid her \$240.00.

For the benefit week ending July 25, 2020, the claimant reported \$150.00 income and received \$211.00 in unemployment insurance benefits and \$600.00 in Federal Pandemic Unemployment Compensation. The employer paid her \$215.00.

The claimant filed for unemployment insurance benefits with an effective date of February 2, 2020. Her weekly benefit amount was determined to be \$289.00. She reopened her claim on May 24, 2020, and filed an additional claim on July 5, 2020. The claimant received benefits from February 2, 2020, to the week ending October 3, 2020. This is a total of \$4,179.71 in state unemployment insurance benefits after the separation from employment. She also received \$8,400.00 in Federal Pandemic Unemployment Compensation for the fourteen-week period ending July 25, 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.

Iowa Admin. Code r. 871-24.23(23) provides:

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

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

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). The claimant was working full-time for the employer as of May 28, 2020. The claimant is disqualified

from receiving unemployment insurance benefits because the claimant was not available for other work. Benefits are denied.

Even though the claimant 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. The claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

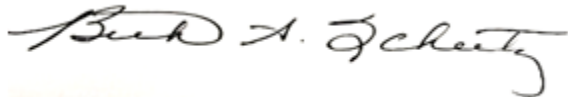
The issue of whether claimant has been overpaid unemployment insurance benefits and Federal Pandemic Unemployment Compensation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

DECISION:

The October 9, 2020, (reference 06) unemployment insurance decision is affirmed. The claimant is not able to work and available for work effective July 5, 2020. Regular unemployment insurance benefits funded by the state of Iowa are denied until such time as the claimant is able to and available for work.

The issue of whether claimant has been overpaid unemployment insurance benefits and Federal Pandemic Unemployment Compensation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. 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. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.



Beth A. Scheetz
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

December 22, 2020
Decision Dated and Mailed

bas/mh