

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JESSICA AGUINIGA BERBER
Claimant

CRAYONS 2 PENCILS PRESCHOOL LLC
Employer

APPEAL 21A-UI-03415-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/22/20
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(10) – Able & Available – Availability Disqualifications

STATEMENT OF THE CASE:

On January 20, 2021, the claimant filed an appeal from the January 15, 2021, (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on March 27, 2021. Claimant participated. Employer did not register for the hearing and did not participate.

ISSUES:

Is the claimant able to and available for work?
Is the claimant on a voluntary leave of absence?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer in August 2018. Claimant last worked as a full-time teacher.

In March 2020, the United States declared a public health emergency due to the COVID 19 pandemic.

On November 8, 2020, claimant's 14-year old son was running a fever. He had been exposed to a person who was positive for COVID 19. Claimant called her employer and told them she needed to take her son to the doctor to be tested for COVID 19. The son's doctor instructed claimant to stay home from work until they received the test results. Claimant's fiancé also learned he had been exposed to COVID 19. Claimant informed employer, who instructed her to stay home until her fiancé and son received their test results. Claimant went back to work on November 12 or 13, 2020, after learning her son and fiancé both tested negative.

On November 27, 2020, claimant's ten-year old daughter developed symptoms of COVID-19. Claimant took her daughter to the doctor to be tested for COVID 19. On November 29, 2020, the test results came back negative. On November 30, 2020, the daughter's school contacted claimant to tell her that her daughter was ill with symptoms of COVID 19. The doctor informed claimant's daughter had a false negative and advised claimant and her immediately family to

quarantine for 14 days. Claimant's employer also asked that she not return to work until the quarantine period ended.

Claimant returned to work on December 16, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work effective November 8, 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.

Here, claimant was on a leave of absence due to her family members having symptoms of COVID 19. While employer asked claimant not to come to work, she was also advised by a medical professional not to work. Therefore, claimant has not established she is able to and available for work, even under the United States Department of Labor's guidance to flexibly interpret this requirement. See Unemployment Insurance Program Letter No. 10-20. Therefore, claimant is not eligible for regular, state-funded unemployment insurance benefits from the effective date of the claim.

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) 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 January 15, 2021, (reference 02) unemployment insurance decision is affirmed. The claimant is not available for work effective November 8, 2020, and regular, state-funded unemployment insurance benefits are denied. Claimant may be eligible for Pandemic Unemployment Assistance.



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

March 30, 2021

Decision Dated and Mailed

cal/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>. **If you do not apply for and are not approved for PUA, you may be required to repay the benefits you've received so far.**