

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**EMILY L TAYLOR**  
Claimant

**APPEAL 20A-UI-15014-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KISMET SUX LLC**  
Employer

**OC: 03/29/20**  
**Claimant: Appellant (1/R)**

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment  
Iowa Code § 96.1A(37) – 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:**

Emily Taylor (claimant) appealed a representative's November 4, 2020, decision (reference 05) that denied benefits based on her continued employment with Kismet Sux (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 20, 2021. The claimant participated personally. The claimant participated personally. The employer participated by Patricia Peck, Administrator.

The administrative law judge took official notice of the administrative file. 20A-UI-15013.S1 and 20A-UI-15014.S1 were heard at the same time.

**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 started working for the employer on May 5, 2020. She continues to work for the employer as a full-time certified nursing assistant earning \$14.00 per hour.

The employer has a policy that requires employees who are exposed to Covid-19, to quarantine. The claimant was exposed to Covid-19 and quarantined from July 31, 2020, through August 8, 2020. At another time, the claimant tested positive for Covid-19 and quarantined from October 4, 2020, through October 13, 2020.

The claimant filed for unemployment insurance benefits with an effective date of March 29, 2020. Her weekly benefit amount was determined to be \$239.00. The claimant filed weekly claims for the weeks ending August 8, October 10, and October 17, 2020. She received some benefits.

#### **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 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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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(1) provides:

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

- (1) An individual who is ill and presently not able to perform work due to illness.

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). When employees are unable to perform work due to a medical condition, they are considered to be unavailable for work. The claimant had been in contact with someone who was diagnosed with Covid-19. Later, she herself, was diagnosed with Covid-19. To prevent the spread of a deadly virus, the employer removed and quarantined an employee from the workplace. She was not able and available for work during that period. The claimant is disqualified from receiving unemployment insurance benefits for the week ending August 8, 2020, and the week ending October 10, 2020.

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.

All other weeks between May 3, 2020, until the present, the claimant is not able and available for work because she is fully employed. The claimant was working full-time for the employer. She is not able and available for other work. The claimant is disqualified from receiving unemployment insurance benefits because the claimant was not available for other work.

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 is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

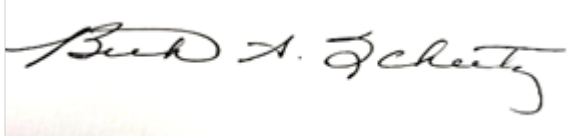
#### **DECISION:**

The November 4, 2020, (reference 05) unemployment insurance decision is affirmed. The claimant is not able to work and available for work. 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 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>.



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Beth A. Scheetz  
Administrative Law Judge  
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February 4, 2021  
Decision Dated and Mailed

bas/scn