

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

BEVERLY R HAMLIN
Claimant

FULL CIRCLE SERVICES INC
Employer

APPEAL NO. 20A-UI-06558-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/12/20
Claimant: Appellant (2)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Beverly Hamlin filed a timely appeal from the June 15, 2020, reference 01, decision that denied benefits effective April 12, 2020, based on the deputy's conclusion that Ms. Hamlin requested and was granted a leave of absence, was voluntarily unemployed, and was not available for work. After due notice was issued, a hearing was held on July 24, 2020. Ms. Hamlin participated. The employer did not provide a telephone number for the appeal hearing and did not participate. Exhibit A was received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX and WAGEA.

The administrative law judge left the hearing record open through Monday, July 27, 2020, to give Ms. Hamlin an opportunity to request medical documentation from her husband's health care provider regarding her involvement in his care and his increased risk in connection with the COVID-19. On July 31, 2020, Ms. Hamlin advised the administrative law judge in writing that her husband's health care provider declined to provide the requested documentation as a matter of policy.

ISSUES:

Whether the claimant has been able to work and available for work since establishing her claim for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Beverly Hamlin established an original claim for benefits that was effective April 12, 2020 and has made consecutive weekly claims since that time. Ms. Hamlin has received regular benefits and Federal Pandemic Unemployment Compensation in connection with the claim for the period of April 12, 2020 through June 6, 2020.

Ms. Hamlin is employed by Full Circle Services, Inc. as an in-home care provider to adults with mental and/or physical disabilities. Ms. Hamlin has three regular clients whom she assisted until her most recent work day, March 18, 2020. Though Ms. Hamlin is classified as a part-time employee, she usually worked 35 to 45 hours per week depending on the employer's staffing

needs. Ms. Hamlin had worked overnight shifts, day shifts and evening shifts for the employer. Her current wage is about \$13.58 per hour. Other staff at Full Circle Services also provide in-home services to the same clients that Ms. Hamlin assisted before she went off work.

On or about March 18, 2020, Ms. Hamlin discussed with the employer her need to go off work in light of the risk posed by community spread of COVID-19. Ms. Hamlin is 75 years old and in good health. Ms. Hamlin's husband is also 75 years old. Ms. Hamlin's husband suffers from several serious health issues. These include bladder cancer, kidney failure that is progressing to the point of requiring dialysis, type 2 diabetes, chronic obstructive pulmonary disease (COPD), and neuropathy. Ms. Hamlin decided to go off work from Full Circle out of concern that she might become exposed to COVID-19 in the course of performing her work duties and might transmit the virus to her husband. To date, neither Ms. Hamlin nor her husband has been exposed to COVID-19. Ms. Hamlin's husband receives medical evaluation and treatment at the VA Hospital in Iowa City, some 70 miles from the couple's home in Dysart. Ms. Hamlin provides transportation to and from the medical appointments and otherwise assists her husband as needed with his medical issues. Due to COVID-19, the VA hospital does not allow Ms. Hamlin to accompany her husband to the hospital for his appointments. Ms. Hamlin does not know whether Mr. Hamlin's doctor had advised him to quarantine or opined on the risk posed by Ms. Hamlin's work outside the home. Though Ms. Hamlin was prepared to resign from her employment, the employer persuaded her to instead go on an approved leave of absence, with the understanding that the employer would contact her if there was a need for her services. The employer continues to provide Ms. Hamlin with a copy of the work schedule, but has not asked her to perform work since she went off work in March 2020. The employer has continued to have work available for Ms. Hamlin.

Ms. Hamlin established a claim for benefits that was effective April 12, 2020 and has made weekly claims for the period of April 12, 2020 through July 18, 2020.

REASONING AND CONCLUSIONS OF LAW:

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. 871-24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

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 connection with the Covid-19 pandemic and passage of the Public Law 116-136, the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act), Iowa Workforce Development published on its website a list of COVID-19-related scenarios under which a claimant would be eligible for unemployment insurance benefits. The scenarios create limited and temporary exceptions to the able and available requirements set forth at Iowa Code section 96.4(3). The scenarios include situations wherein the claimant is immune compromised and is advised to quarantine. They also include situations wherein the claimant is caring for a family member, depending on the circumstances. See <https://www.iowaworkforcedevelopment.gov/COVID-19>, updated March 30, 2020.

The weight of the evidence in the record establishes that Ms. Hamlin does not meet the standard able and available requirements because she has indeed been on a leave of absence since she filed the claim for benefits that was effective April 12, 2020. However, the weight of the evidence indicates that Ms. Hamlin's circumstances of being off work fall within the COVID-19 scenario pertaining to the need to care for a family member. Ms. Hamlin's spouse is immune compromised. Ms. Hamlin provides care and support to her spouse as needed. This includes transportation to and from medical appointments. Under the COVID-19 amended availability requirements, Ms. Hamlin is eligible for benefits for the period beginning April 12, 2020, provided she meets all other eligibility requirements. The employer's account will not be charged.

DECISION:

The June 15, 2020, reference 01, decision is reversed. Pursuant to the COVID-19 temporary exceptions to the able and available requirements, Ms. Hamlin has been able to work and available for work since establishing her claim for benefits. Accordingly, the claimant is eligible for benefits for the period beginning April 12, 2020, provided she meets all other eligibility requirements. The employer's account shall not be charged.

A rectangular box containing a handwritten signature in cursive script that reads "James E. Timberland".

James E. Timberland
Administrative Law Judge

August 20, 2020
Decision Dated and Mailed

jet/sam