

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

TINA M RUDD
Claimant

CARE INITIATIVES
Employer

APPEAL NO. 21A-UI-08706-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/10/21
Claimant: Appellant (1)

Iowa Code Section 96.4(3) – Able & Available
Iowa Administrative Code rule 871-24.2.(1)(g) – Weekly Claim Requirement

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 18, 2021, reference 01, decision that denied benefits for the period beginning January 10, 2021, based on the deputy's conclusion that the claimant 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 June 10, 2021. Claimant participated. Alyce Smolsky of Equifax represented the employer and presented testimony through Ryan Skopec and Demi Berens. Exhibit A was received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO and DBRO.

ISSUES:

Whether the claimant was able to work and available for work during the week of January 10-16, 2021.

Whether the claimant made a weekly claim for the benefit week that ended January 16, 2021.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant is employed by Care Initiatives as the full-time Activities Director at the employer's Dunlap, Iowa long-term care facility. The claimant's usual work hours are 8:00 a.m. to 4:00 p.m. Monday through Friday. The claimant was off work due to illness during the week of January 10-16, 2021. On Sunday, January 10, 2021, the claimant began to experience severe head pain. On Monday, January 11, 2021, the claimant contacted the workplace to report her symptoms pursuant to the employer's COVID-10 protocol. The claimant told the employer she thought she was experiencing a migraine. The employer advised the claimant she would need to remain off work until she had two negative COVID-19 tests. The claimant's illness symptoms worsened. On Tuesday, January 12, the claimant still had the headache but was not also vomiting and running a fever. The claimant was too sick to work. On that day, the claimant was tested for COVID-19 and tested negative. The employer told the claimant she would need to remain off work for the week and undergo COVID-19 testing on Friday, January 15. On Thursday, January 14, the claimant continued to be too ill to work and consulted her doctor.

The claimant's doctor was concerned the claimant might have COVID-19 and advised the claimant to remain of work. The claimant's doctor gave shots that helped with the nausea. On Friday, February 15, the claimant again tested negative for COVID-19. The claimant returned to the full-time employment on Monday, January 18, 2021. The claimant used 10 hours of paid time off, \$180.00, for the week she was off work.

During the week that started January 10, 2021, the claimant established an original claim for benefits that was effective January 10, 2021. During the application process, Iowa Workforce Development reminded the claimant that she had to make weekly claims to receive weekly benefits. During the application process, the claimant acknowledged her obligation to reach the claimant handbook, which also addresses the weekly claim requirement. The claimant was familiar with the weekly claim requirement, based on a 2017 claim and the weekly claims she made at that time. The claimant did not make any weekly claims in connection with the original claim that was effective January 10, 2021.

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(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.

Iowa Code section 96.1A(37) 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.

If a claimant individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. Iowa Code section 96.7(2)(a)(2)(a).

Iowa Administrative Code rule 871-24.2.(1)(g) provides as follows:

(g). No continued claim for benefits shall be allowed until the individual claiming benefits has completed a continued claim or claimed benefits as otherwise directed by the department.

- (1) The weekly continued claim shall be transmitted not earlier than 8 a.m . on the Sunday following the Saturday of the weekly reporting period and, unless reasonable cause can be shown for the delay, not later than close of business on Friday following the weekly reporting period.

The claimant did not make any weekly claims in connection with the January 10, 2021 original claim and therefore is not eligible for benefits for the week that ended January 16, 2021.

The claimant was unable to work and unavailable for work due to illness during the week of January 10-16, 2021. The claimant was not temporarily or partially unemployed during that week. The claimant is not eligible for benefits for the week that ended January 16, 2021.

DECISION:

The March 18, 2021, reference 01, decision is affirmed. The claimant did not make any weekly claims in connection with the January 10, 2021 original claim and therefore is not eligible for benefits for the week that ended January 16, 2021. The claimant was unable to work and unavailable for work due to illness during the week of January 10-16, 2021. The claimant was not temporarily or partially unemployed during that week. The claimant is not eligible for benefits for the week that ended January 16, 2021.



James E. Timberland
Administrative Law Judge

June 23, 2021
Decision Dated and Mailed

jet/ol

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 unemployed or continue to be 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>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits that you must repay.

ATTENTION: On May 11, 2021, Governor Reynolds announced that Iowa will end its participation in federal pandemic-related unemployment benefit programs effective June 12, 2021. The last payable week for PUA in Iowa will be the week ending June 12, 2021. Additional information can be found in the press release at <https://www.iowaworkforcedevelopment.gov/iowa-end-participation-federal-unemployment-benefit-programs-citing-strong-labor-market-and>.