

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CHRISTIN E COLE
Claimant

APPEAL NO. 21A-UI-09660-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**JOHN DEERE CONSTRUCTION
EQUIPMENT**
Employer

OC: 07/26/20
Claimant: Appellant (1R)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

The claimant, Christin Cole, filed a timely appeal from the March 30, 2021, reference 01, decision that denied benefits effective July 26, 2020, based on the deputy's conclusion that the claimant was not partially unemployed within the meaning of the law. After due notice was issued, a hearing was held on June 21, 2021. Claimant participated. The employer did not provide a telephone number for the appeal hearing and did not participate. Exhibit A, the online appeal, was received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, DBIN, KPYX, NMRO, WAGE-A, the October 7, 2020 Fact-Finding Claimant Questionnaire for the Able and Available, and the October 13, 2020, reference 02, decision (o.c. 07/28/19).

ISSUES:

Whether the claimant was able to work and available for work for the period beginning July 26, 2020.

Whether the claimant was partially and/or temporarily unemployed for the period beginning July 26, 2020.

Whether the employer's account may be charged for benefits for the period beginning July 26, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant commenced her full-time employment with John Deere Construction Equipment in 2017 and worked as a full-time assembler until the first quarter of 2020. At that time, the employer laid off assemblers in response to the COVID-19 pandemic. There was a collective bargaining agreement that impacted the claimant's employment. The claimant had sufficient seniority to preserve her employment by moving into a full-time machine operator position that offered the same work hours, but slightly reduced pay. The new work hours were 6:00 a.m. to 2:30 p.m. Monday through Friday.

The claimant was working in the machine operator position at the time the Dubuque Community School District closed schools for in-person classes on or about March 16, 2020. The District remained closed to in-person classes through the end of the academic year, which concluded during the first week of June 2020. The claimant has three children. The two eldest are school aged. The youngest was attending preschool. In response to the school closure, the claimant commenced taking intermittent leave from work by leaving at noon on Monday through Friday. In other words, the claimant was reducing her shift by 2.5 hours each workday. When the school year ended, the claimant returned to working full-time hours. The claimant's weekly claims indicate the claimant return to work during the week of August 9-15, 2020, but did not return to working full-time hours at that time.

When the new academic year began on or about August 24, 2020, the claimant's children participated in a hybrid learning curriculum whereby the children went to in-person classes two days one week and three days the next and whereby the two eldest children participated in remote learning on the school days when they did not attend classes in-person. When the school year began, the claimant continued to take intermittent leave from work by leaving at noon on those days when her children participated in remote learning. During this period, the claimant worked 24 to 32 hours per week. The claimant estimates her hourly wage was \$22.84. The claimant continued on this reduced work schedule until classes reported for full-time in-person learning. The claimant is unable to state when that occurred.

The claimant last performed work for John Deere on January 13, 2021. At that time, the claimant commenced an approved leave of absence that was based on the claimant's anxiety and depression. The claimant's doctor took her off work. At the time the claimant commenced the approved leave, the claimant's anticipated return-to-work date was February 8, 2021. The claimant remained off work through February 6, 2021.

The claimant established an original claim for benefits that was effective June 26, 2020. The claimant made weekly claims for each of the weeks between June 26, 2020 and October 17, 2020. The claimant then discontinued her claim for benefits in connection with her return to full-time employment. The claimant established an additional claim for benefits that was effective February 7, 2021. The claimant did not make weekly claims for the period of October 18, 2020 through February 6, 2021.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that the appropriate period to be addressed and adjudicated by this decision is limited to the period of July 26, 2020 through February 6, 2021. The first date is the original claim date that started the new benefit year. It is also the beginning date referenced in the March 30, 2021, reference 01, decision. This approach is also based on the break in the claim between October 18, 2020, the filing of the additional claim for benefits that was effective February 7, 2021, and the claimant's assertion that she separated from the employment at about the time she established the additional claim.

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(8), (10) and (23) provides, in relevant part, as follows:

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

(8) Where availability for work is unduly limited because of not having made adequate arrangements for child care.

...

(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.

...

(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.

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 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 was not available for work within the meaning of the law during the period of July 26, 2020 through February 6, 2021. Throughout that period, the employer had full-time work available for the claimant, which means the claimant was neither temporarily unemployed nor partially unemployed within the meaning of the law. The claimant was initially completely off work due to a lack of adequate childcare. The claimant then continued to be unavailable for *full-time* employment due to a lack of childcare that necessitated her being off work a portion of each week. This continued through the benefit week that ended October 17, 2020, at which time the claimant discontinued her claim for benefits because she had returned to the full-time employment. The claimant continued in the full-time employment until January 13, 2021, at which she requested and commenced a health-related leave of absence that again took her completely off work. The situation of being voluntarily off work due to the health-related leave continued until the claimant established the additional claim for benefits that was effective February 7, 2021. The claimant is not eligible for regular benefits for the period of July 26, 2020 through February 6, 2021. The employer's account will not be charged for benefits for that period.

DECISION:

The March 30, 2021, reference 01, is affirmed. The claimant was not available for work, was not partially unemployed, and was not temporarily unemployed during the period of July 26,

2020 through February 6, 2021. The claimant is not eligible for benefits for that period. The employer's account will not be charged for benefits for that period.

This matter is remanded to the Benefits Bureau for a decision regarding the claimant's separation from the employment and a decision regarding the claimant's ability to work and availability for work during the period beginning February 7, 2021.



James E. Timberland
Administrative Law Judge

October 5, 2021
Decision Dated and Mailed

jet/scn