

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NICOLE TEDFORD

Claimant

BICKFORD SENIOR LIVING GROUP LLC

Employer

APPEAL 20A-UI-11796-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/10/20

Claimant: Appellant (1/R)

Iowa Code § 96.19(38)a & b – 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:

Nicole Tedford (claimant) appealed a representative's September 17, 2020, decision (reference 02) that denied benefits based on her employment with Bickford Senior Living Group (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for November 17, 2020. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing.

20A-UI-11795-S1 and 20A-UI-11795-S1 were heard concurrently. The administrative law judge took official notice of the administrative file.

ISSUES:

The issue is whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant has worked for the employer since on August 31, 2015, as a full-time pharmacy technician.

The claimant spent time with her mother on May 9 and 10, 2020. Later, the claimant discovered her mother had been exposed to someone with the Covid-19 virus. On or about May 11, 2020, the claimant notified the employer of the situation. The claimant quarantined until her mother received a negative test result. She returned to work on May 17, 2020.

The claimant filed for unemployment insurance benefits with an effective date of May 10, 2020. Her weekly benefit amount was determined to be \$452.00. The claimant received \$452.00 for the week ending May 16, 2020. She also received \$600.00 in Federal Pandemic Unemployment Compensation for the one-week period ending May 16, 2020.

REASONING AND CONCLUSIONS OF LAW:

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(1)a 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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

Iowa Admin. Code r. 871-24.23(1) and (10) provide:

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.

(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.

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 her mother who was waiting for her Covid-19 result. To prevent the spread of a deadly virus, the employer granted her a leave of absence during the quarantine. She was not able and available for work during that period. The claimant is disqualified from receiving unemployment insurance benefits for the week ending May 16, 2020.

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.

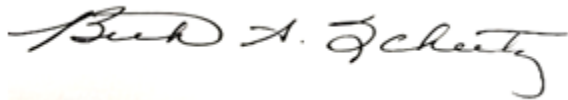
The issue of whether claimant has been overpaid unemployment insurance benefits and Federal Pandemic Unemployment Compensation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

DECISION:

The September 17, 2020, (reference 02) unemployment insurance decision is affirmed. The claimant is considered to be unavailable for work and is not eligible to receive unemployment insurance benefits for the week ending May 16, 2020

The issue of whether claimant has been overpaid unemployment insurance benefits and Federal Pandemic Unemployment Compensation 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>.



Beth A. Scheetz
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November 24, 2020
Decision Dated and Mailed

bas/mh