

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**EMILY H GARVIN**  
Claimant

**TMONE LLC**  
Employer

**APPEAL 20A-UI-05007-CL-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/22/20**  
**Claimant: Appellant (4R)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.23(10) – Able & Available – Availability Disqualifications  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
PL 116-136, Sec. 2104(b) – Federal Pandemic Unemployment Compensation

**STATEMENT OF THE CASE:**

On June 1, 2020, the claimant filed an appeal from the May 28, 2020, (reference 02) unemployment insurance decision that denied benefits based on claimant's availability for work. The parties were properly notified about the hearing. A telephone hearing was held on June 29, 2020. Claimant participated. Employer participated through executive administrator Molly Meister. Employer's Exhibit 1 was received.

**ISSUES:**

Is the claimant able to and available for work?  
Is the claimant on a voluntary leave of absence?  
Was the claimant overpaid unemployment insurance benefits?  
Is the claimant eligible for Federal Pandemic Unemployment Compensation?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on March 11, 2020. Claimant last worked as a full-time call center representative.

Claimant's last day of work was March 25, 2020.

On March 16, 2020, South Sioux City schools shut down. On March 22, 2020, claimant's daycare also shut down. Claimant has a daughter who is five years old.

Claimant informed her supervisor, Pamela, that she could not work on March 27, 2020, because she did not have childcare for her daughter. At that time, the employer did not have remote work available.

Claimant and employer did not discuss a leave of absence.

On April 1, 2020, Pamela sent a text message to claimant asking for an update. Claimant apologized, but stated she would not be able to return to work.

Claimant found childcare for her daughter effective June 1, 2020.

Claimant has received regular, state funded unemployment insurance benefits and Federal Pandemic Unemployment Compensation (FPUC) benefits since filing this claim with an effective date of March 22, 2020.

The Benefits Bureau of Iowa Workforce Development has not issued a decision on whether claimant's separation from this employer disqualifies her from receiving regular, state-funded unemployment insurance benefits.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work from March 22, 2020, through June 1, 2020.

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. 871-24.23(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.

Here, employer has work available for claimant. However, claimant informed employer she was unable to work due to lack of childcare. Claimant has not established she is able to and available for work, even under the United States Department of Labor's guidance to flexibly interpret this requirement. See Unemployment Insurance Program Letter No. 10-20.

Claimant was not considered to be on a leave of absence, especially considering her employment ended effective April 1, 2020, but also was not available for work until June 1, 2020, when her daycare allowed her child to return. Therefore, claimant is not eligible for

regular, state-funded unemployment insurance benefits from the effective date of her claim until June 1, 2020.

Additionally, Iowa Workforce Development has not issued a decision on whether claimant is disqualified from receiving regular, state-funded unemployment insurance benefits due to her separation from employment on April 1, 2020. That matter will be remanded for a fact finding interview and an initial decision.

Even though claimant may not be 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 administrative law judge will not consider the issue of whether claimant has been overpaid benefits prior to the denial decision being issued, as claimant may be eligible for Pandemic Unemployment Assistance, and in that case, such a decision would be unnecessary. However, the administrative law judge cautions claimant that if she does not apply for PUA—and is not approved—she may be found to have been overpaid benefits and will have to repay those benefits.

**DECISION:**

The May 28, 2020, (reference 02) unemployment insurance decision is modified in favor of claimant. The claimant is not available for work from March 22, 2020, through June 1, 2020, due to lack of childcare. Claimant is able to and available for work after June 1, 2020, and is eligible for regular, state-funded unemployment insurance benefits after that date, if she otherwise qualifies. Claimant may be eligible for Pandemic Unemployment Assistance, but must apply for those benefits, as noted in the instructions below.

**REMAND:**

This matter is remanded to the Benefits Bureau of Iowa Workforce Development for an initial decision on whether claimant's separation from employment with this employer on April 1, 2020, disqualifies her from receiving regular, state-funded unemployment insurance benefits.



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Christine A. Louis  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515)478-3528

July 10, 2020

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Decision Dated and Mailed

cal/sam

*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. If you are not allowed PUA benefits, the agency may find that you have been overpaid regular, unemployment insurance benefits and you may be required to repay those benefits.**

Additional information on PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.