

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MERCADIES FAY
Claimant

ADVENTURE LANDS OF AMERICA INC
Employer

APPEAL 20A-UI-15299-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Appellant (1)

Iowa Code section 96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

On November 6, 2020, Mercadies Fay (claimant/appellant) filed an appeal from the October 29, 2020 (reference 02) unemployment insurance decision that denied benefits as of May 24, 2020 based on a finding claimant was not available for work.

A telephone hearing was held on January 22, 2021. The parties were properly notified of the hearing. The claimant participated personally. Adventure Lands of America Inc (employer/respondent) participated by HR Director April Sauls. HR Representative Dana Black observed the hearing.

Employer's Exhibits 1-5 were admitted. Official notice was taken of the administrative record.

ISSUES:

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant began working for employer on August 16, 2018. Claimant was employed as a part-time server. The last day claimant worked on the job was March 14, 2020. Employer stopped dine-in service on March 17, 2020, due to pandemic. There was no work available for claimant from that date until dine-in service resumed on May 15, 2020.

Claimant was first scheduled to work again on May 22, 2020. Claimant was aware that she had been scheduled to return to work. However, she was not available to return to work at that time because she was unable to secure childcare. Claimant reported this reason to employer. Claimant was able to secure childcare and thus was available for work again in mid-August 2020. Claimant stopped filing for benefits at that time, with the benefit week ending August 15, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the October 29, 2020 (reference 02) unemployment insurance decision that denied benefits as of May 24, 2020 based on a finding claimant was not available for work is AFFIRMED.

Iowa Code section 96.4(3) provides:

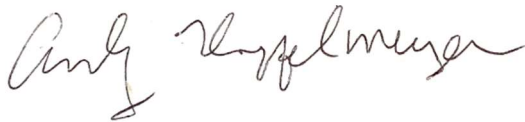
An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

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".

Claimant was not available for work from the benefit week ending May 30, 2020. Her unavailability was due to a lack of childcare. She did not secure childcare until mid-August 2020, at which point stopped filing for benefits. Claimant was therefore unavailable for work and ineligible for benefits from the benefit week ending May 30, 2020 and continuing through the benefit week ending August 15, 2020.

DECISION:

The October 29, 2020 (reference 02) unemployment insurance decision that denied benefits as of May 24, 2020 based on a finding claimant was not available for work is AFFIRMED.



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

February 8, 2021
Decision Dated and Mailed

abd/kmj

Note to Claimant:

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are 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.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.