

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

HABAB E ELMAHBOUB
Claimant

APPEAL NO. 20A-UI-06619-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

REACH FOR YOUR POTENTIAL INC
Employer

OC: 04/12/20
Claimant: Appellant (1)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Habab Elmahboub filed a timely appeal from the June 12, 2020, reference 01, decision that denied benefits effective April 12, 2020, based on the deputy's conclusion that Ms. Elmahboub was on a leave of absence that she requested and the employer approved, that Ms. Elmahboub was voluntarily unemployed, and that Ms. Elmahboub was unavailable for work. After due notice was issued, a hearing was held on July 27, 2020. Ms. Elmahboub participated and presented additional testimony through Tameh Mohamed. Bobbi Chipman, Human Resources Director, represented the employer. Exhibits A and B were received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX and WAGE-A. Arabic-English interpreter Ali Alsalahi of CTS Language Link assisted with the hearing.

ISSUES:

Whether the claimant has been able to work and available for work since she established the claim for benefits that was effective April 12, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Habab Elmahboub was employed by Reach for Your Potential, Inc. as a part-time Direct Support Professional. Ms. Elmahboub began the employment in July 2019 and last performed work for the employer on November 25, 2020. The employer is a social services agency that provided home and community based support to people with disabilities. The employer operates 29 group homes located within a five minute drive of the employer's office in Iowa City. At the start of the employment, Ms. Elmahboub would be scheduled for 30 hours per week. As the clients Ms. Elmahboub started to go to a day program, there was less need for Ms. Elmahboub's services in that particular home. The employer offered Ms. Elmahboub work in other nearby homes, but Ms. Elmahboub elected to work only the one home, despite a reduction in work hours. By November 2019, Ms. Elmahboub was working just 10 to 12 hours per week. Before Ms. Elmahboub went off work in November 2019, she was working the day shift, Monday and Friday, 9:00 a.m. to 2:45 p.m. Earlier in the employment, Ms. Elmahboub had also worked Tuesdays and Thursdays.

On December 1, 2020, Ms. Elmahboub began an approved leave of absence that was based on her pregnancy. Ms. Elmahboub was to return to work on March 1, 2020, following the birth of her child. Ms. Elmahboub has a four-year-old and a three-year-old whom she removed from state-subsidized daycare while she was on her medical leave. To be eligible for the state-subsidized daycare, Ms. Elmahboub was required to work 30 hours per week or to spend that amount of time in a combination of work and studies. Ms. Elmahboub's baby was born in January 2020. Ms. Elmahboub suffered no loss of childcare services in connection with the COVID-19 pandemic.

Ms. Elmahboub did not return to work after the birth of her child. In February 2020, Ms. Elmahboub met with a scheduling coordinator regarding her anticipated March 1, 2020 return work. Ms. Elmahboub told the scheduling coordinator that she wanted 30 hours per week. The employer continued to have that amount of work available for Ms. Elmahboub. The scheduling coordinator proposed multiple options that would get Ms. Elmahboub to 30 hours per week. These options included day shift options and evening shift options. Ms. Elmahboub ultimately decided not to return to the employment out of concern for COVID-19. Ms. Elmahboub was concerned that she might bring the virus home from work to her baby. The employer had stockpiled personal protective equipment in anticipation of the COVID-19 pandemic and was prepared to maintain as safe a work environment as possible for Ms. Elmahboub and others. Ms. Elmahboub did not consult with a doctor to arrive at her decision not to return to the employment. Ms. Elmahboub asserts that she had decided to look for "safer" work environments such as factories. However, Ms. Elmahboub did not in fact seek such work or any other work.

Ms. Elmahboub established an original claim for benefits that was effective April 12, 2020. Iowa Workforce Development set her weekly benefit amount for regular benefits at \$165.00. By the time of the July 27, 2020 appeal hearing, Ms. Elmahboub had made weekly claims for the 14 consecutive weeks between April 12, 2020 and July 18, 2020. IWD paid Ms. Elmahboub \$1,320.00 in regular benefits and \$4,800.00 in Federal Pandemic Unemployment Compensation for the eight weeks between April 12, 2020 and June 6, 2020.

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(10) and (26) 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.

Iowa Admin. Code r. 871-24.22(2)(1)(2)(3) provides:

Benefit 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.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

In connection with the COVID-19 pandemic and passage of the Public Law 116-136, the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act), Iowa Workforce

Development published on its website a list of Covid-19-related scenarios under which a claimant would be eligible for unemployment insurance benefits. The scenarios create limited and temporary modifications to the able and available requirements set forth at Iowa Code section 96.4(3). These include situations wherein a worker is sick with COVID-19, a worker is exposed to COVID-19 and has to quarantine, where a worker is immunosuppressed and has been advised by a doctor to quarantine, where a worker is caring for a family member who is ill with COVID-19, and where the worker lacks childcare due to a COVID-19 based school closing, where the employer shuts down or reduces work hours due to COVID. See <https://www.iowaworkforcedevelopment.gov/COVID-19>, updated March 30, 2020.

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).

The weight of the evidence establishes that Ms. Elmahboub has been able to work since she filed her claim for benefits, but has elected not to make herself available for work since she filed the claim for benefits. The employer continued to have suitable, safe work available for Ms. Elmahboub, but Ms. Elmahboub elected not to return to it. Ms. Elmahboub elected not to pursue any work and elected instead to remain at home. Ms. Elmahboub was no longer on an approved leave of absence as of March 1, 2020. Ms. Elmahboub's concern about the COVID-19 pandemic did not offer a reasonable basis for choosing not to be available for work. None of these COVID-19 exceptions to the able and available requirements apply to Ms. Elmahboub's circumstances. Benefits are denied for the period beginning April 12, 2020. The availability disqualification continued in effect at the time of the July 27, 2020 appeal hearing.

In light of the employment separation that occurred when Ms. Elmahboub elected not to return to the employment at end of her approved leave of absence, this matter will be remanded to the Benefits Bureau for initial determination of the issues related to the separation.

This matter is remanded to the Benefits Bureau for entry of overpayment decisions regarding the regular and FPUC benefits paid to the claimant for the period of April 12, 2020 through June 6, 2020.

DECISION:

The June 12, 2020, reference 01, decision is affirmed. The claimant has been able to work, but has not been available for work since she established the original claim for benefits that was effective April 12, 2020. Benefits are denied for the period beginning April 12, 2020. The availability disqualification continued in effect at the time of the July 27, 2020 appeal hearing.

This matter will be remanded to the Benefits Bureau for initial determination of the issues related to the separation that occurred on or about March 1, 2020.

This matter is remanded to the Benefits Bureau for entry of overpayment decisions regarding the regular and FPUC benefits paid to the claimant for the period of April 12, 2020 through June 6, 2020.

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. *If this decision*

becomes final or if you are not eligible for Pandemic Unemployment Assistance (PUA), you will have an overpayment of benefits that you will be required to repay. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, 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>.



James E. Timberland
Administrative Law Judge

September 9, 2020
Decision Dated and Mailed

jet/sam