

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SHANTELL C BEECHUM
Claimant

**TRUSTEES OF THE GRAND CHARITY
FUND**
Employer

APPEAL 21A-UI-06869-AD-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

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

Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search

STATEMENT OF THE CASE:

On February 12, 2021, Shantell Beechum (claimant/appellant) filed an appeal from the February 8, 2021 (reference 02) unemployment insurance decision that denied benefits as of July 19, 2020 based on a finding claimant was unable to work due to illness.

After due notice was issued, a hearing was held on May 17, 2021. Claimant participated personally. Trustees of the Grand Charity Fund (employer/respondent) participated by HR Director Deanne Mulevcheck. Official notice was taken of the administrative record.

ISSUES:

I. 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 April 14, 2020. The most recent day claimant was present at the job performing work was July 22, 2020. Claimant was unable to perform in her position due to contracting and having lingering symptoms of COVID-19 from that time until separating from employment on January 8, 2021. From that time, claimant remained ill but was able and available for work elsewhere. Specifically, claimant has experience performing largely sedentary tasks such as forklift driving. She is able to perform that kind of work.

Claimant filed a claim for benefits each week from the benefit week ending July 25, 2020 and continuing to present. Claimant filed an application for Pandemic Unemployment Assistance (PUA) on February 12, 2021. A decision has not yet been issued on claimant's eligibility for PUA.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the February 8, 2021 (reference 02) unemployment insurance decision that denied benefits as of July 19, 2020 based on a finding claimant was unable to work due to illness is MODIFIED in favor of appellant. Claimant is eligible for benefits as set forth below.

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(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(35) provides:

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

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

To be able to work, "[a]n 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." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871-24.22(1). "An evaluation of an individual's ability to work for the purposes of determining that individual's eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the

individual resides." *Sierra* at 723. The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that "[i]nsofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

Claimant does not meet the ability and availability requirements to be eligible for benefits from the benefit week ending July 25, 2020 through the benefit week ending January 9, 2021. This is because she was unable to perform in her position due to contracting and having lingering symptoms of COVID-19.

Claimant is able and available for work effective with the benefit week ending January 16, 2021. At that point, her ability to work is not measured by the job she held most recently, but by standards of her education, training, and work history. Since she has performed sedentary jobs within the work history, she is considered able to work even if she cannot yet return to a job as most recently performed for the employer.

The administrative law judge notes claimant may be eligible for PUA during the periods she was unable to work due to contracting and having continuing symptoms of COVID-19. Claimant did file an application for PUA which has not yet been processed. This matter is remanded for the Department to process that application and issue a decision as to her eligibility for PUA during weeks she is not eligible for regular unemployment insurance benefits.

DECISION:

The February 8, 2021 (reference 02) unemployment insurance decision that denied benefits as of July 19, 2020 based on a finding claimant was unable to work due to illness is MODIFIED in favor of appellant. Claimant is eligible for benefits as set forth above.

REMAND:

This matter is remanded for processing of claimant's application for PUA and issuance of a decision as to her eligibility for PUA. It is also remanded for decisions as to whether claimant has been overpaid regular unemployment insurance benefits and/or Pandemic Emergency Unemployment Compensation (PEUC).



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

May 26, 2021
Decision Dated and Mailed

abd/scn

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>.