

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**STEPHANIE A FORDYCE**  
Claimant

**APPEAL 21A-UI-09577-DZ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FAREWAY STORES INC**  
Employer

**OC: 03/07/21  
Claimant: Respondent (2)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quit  
Iowa Admin. Code r. 871-24.10 – Employer Participation in Fact-Finding Interview  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
PL 116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation  
Iowa Code § 96.4(3) – Able to and Available for Work

**STATEMENT OF THE CASE:**

Fareway Stores Inc., the employer/appellant, filed an appeal from the April 2, 2021, (reference 01) unemployment insurance decision that allowed benefits as of March 7, 2021. The parties were properly notified of the hearing. A telephone hearing was held on June 21, 2021. The employer participated through Stephanie Rohrer, human resources generalist. Ms. Fordyce participated and testified. Official notice was taken of the administrative record. Employer's Exhibits 1-4 were admitted into evidence. Both parties waived notice on the issue of able to and available for work.

**ISSUE:**

Is Ms. Fordyce able to and available for work?  
Was Ms. Fordyce laid off, discharged for disqualifying job-related misconduct or did she voluntarily quit without good cause attributable to the employer?  
Was Ms. Fordyce overpaid benefits?  
If so, should he repay the benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Fordyce began working for the employer on October 27, 2014. She worked as a part-time cashier.

The employer's policy required employees to wear a face covering (face mask, face shield or any other kind of covering over the mouth and nose) as of early summer 2020. The policy was in line with all of the public health guidelines, including for the Center for Disease Control and Prevention (CDC), Iowa Department of Public Health and other public health officials and was put in place to help employees protect their own health and to protect the health of the

customers. Some employees began bringing in doctor's note excusing them from wearing a face covering because they did not want to wear a face covering. The employer then decided that it would not allow any exceptions to the policy. Employees had to either wear a face covering or not attend work.

On February 15, 2021, Ms. Fordyce asked to not be required to wear any face coverings as an accommodation for her health conditions. She is diagnosed with asthma and a heart condition. Ms. Fordyce testified that she experiences coughing spells, has to use her inhaler more often, and her heart rate increases when she wears a face mask or when she wears a face shield. On March 3, Ms. Fordyce gave the employer a doctor's note that read "face shield + face mask waiver: Asthma, etc. unable to wear, Strain heart." Ms. Fordyce stopped worked and was on unpaid leave.

On March 8, the employer denied Ms. Fordyce's request for an accommodation and extended her unpaid leave through May 1. On April 6, the employer sent Ms. Fordyce a letter asking her to let the employer know if she would return to work by May 1 or would she quit. On April 12, Ms. Fordyce told the employer that she would return to work on May 1. On April 14, Ms. Fordyce sent the employer the same letter she had sent on February 5 asking again to not be required to wear any face coverings as an accommodation for her health conditions. On April 27, the employer again denied Ms. Fordyce's request for an accommodation and asked her to let the employer know if she would return to work by May 17 or would she quit. On April 5, Ms. Fordyce told the employer that she would return on May 17 but she would not wear a face covering. Ms. Fordyce sent the employer the March 3 doctor's note again and the same letter she had sent on February 5 and April 14 asking yet again to not be required to wear any face coverings as an accommodation for her health conditions.

In late May, the governor signed a law generally prohibiting mask mandates. The employer changed its policy to recommend but not require that employees wear a face covering. The employer told Ms. Fordyce about the policy. Ms. Fordyce returned to work on June 7.

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

For the reasons that follow, the administrative law judge concludes Ms. Fordyce is not able to and available for work from March 8, 2021, the effective date of her claim, through June 6, 2021

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. 871-24.22(2) 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.

(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(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.

A person claiming benefits has the burden of proof that she is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

Inasmuch as Ms. Fordyce's medical conditions and inability to wear a face covering are not work-related and her doctor had not released her to return to work with or without restrictions, she has not established her ability to work from March 8, 2021 through June 6, 2021. The employer is not obligated to accommodate a non-work related medical condition, and since Ms. Fordyce has not been released to perform her full work duties, she is not considered able to or available for work. Benefits are denied.

**DECISION:**

The April 2, 2021, (reference 01) unemployment insurance decision is reversed. Ms. Fordyce is not able to and available for work from March 8, 2021 through June 6, 2021. Benefits are denied during these weeks.



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July 2, 2021  
Decision Dated and Mailed

dz/mh