

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**CHELSEY N BACKER**  
Claimant

**BREMER COUNTY AUDITOR**  
Employer

**APPEAL 20A-UI-08627-DB-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/12/20**  
**Claimant: Respondent (2R)**

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Iowa Code § 96.4(3) – Able to and Available for Work  
Iowa Code § 96.19(38)B – Total, Partial, and Temporary Unemployment

**STATEMENT OF THE CASE:**

The employer/appellant filed an appeal from the July 9, 2020 (reference 01) unemployment insurance decision that found claimant was eligible for unemployment benefits due to a short-term layoff. The parties were properly notified of the hearing. A telephone hearing was held on September 2, 2020. The claimant, Chelsey N. Backer, participated personally. The employer, Bremer County Auditor, was represented by Attorney Ann Smisek and participated through witness Susan Lahr. Employer's Exhibits 1 through 3 were admitted. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

**ISSUES:**

Is the claimant eligible for total or partial unemployment benefits?  
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 started working for this employer on December 16, 2019. She is still employed to date. Claimant works as a Residential Specialist II. She started as a part-time employee and then began her full-time position on February 2, 2020. See Exhibit A.

Her job duties include providing cares to persons with mental or developmental disabilities. Her normal working hours were 2:00 p.m. to 10:00 p.m. Monday, Tuesday, Thursday and Friday each week. She also works every other weekend. She works 40 hours per week.

Claimant filed her original claim for benefits effective April 12, 2020. Her weekly-benefit amount is \$428.00. Claimant's administrative records establish that she has filed weekly-continued claims for benefits each week from April 12, 2020 through June 20, 2020.

In April, May and June of 2020, the claimant suffered from different ailments including the flu, a migraine, bronchitis, sinus infection, and fevers. The employer had a policy in place restricting employees from working if they had a fever above 100.2 degrees Fahrenheit.

From April 12, 2020 through April 16, 2020, claimant was off of work due to illness but was paid sick leave for all hours missed. Claimant earns \$11.25 per hour.

Claimant continued to be off of work due to illness from April 16, 2020 through April 30, 2020. She was paid sick leave for all of her days missed during that time period.

Claimant reported earnings of \$90.00 for the week of April 26, 2020 through May 2, 2020 when filing her weekly-continued claims for benefits. She had worked a full 8-hour shift during that week. The other days she was off of work ill.

From May 3, 2020 through May 9, 2020, claimant worked 44 hours and reported her gross earnings of \$450.00 when filing her weekly-continued claim for benefits. No benefit payments were paid to her that week because she earned over her weekly-benefit amount, plus fifteen dollars.

Claimant did not work May 10, 2020 through May 16, 2020 due to illness and/or fever. She was on an unpaid leave of absence during that time, as she had exhausted all of her paid sick leave. Claimant reported earnings of \$0.00 for the weekly-continued claim filed for May 10, 2020 through May 16, 2020 and received a benefit payment of \$428.00.

Claimant worked 24 hours from May 17, 2020 through May 23, 2020. She worked a reduced schedule that week because she was either ill or had a temperature above 100.2 degrees Fahrenheit. She reported gross earnings of \$270.00 when she filed her weekly-continued claim for benefits and received a benefit payment of \$265.00.

Claimant worked 24 hours from May 24, 2020 through May 30, 2020. She worked a reduced schedule because she was either ill or had a temperature above 100.2 degrees Fahrenheit. She reported gross earnings of \$360.00 when she filed her weekly-continued claim for benefits and received a benefit payment for that week of \$175.00.

Claimant worked 24 hours from May 31, 2020 through June 6, 2020. She worked a reduced schedule because she was either ill or had a temperature above 100.2 degrees Fahrenheit. She reported gross earnings of \$271.00 when she filed her weekly-continued claim for benefits and received a benefit payment for that week of \$264.00.

Claimant worked 23 hours from June 7, 2020 through June 13, 2020. She worked a reduced schedule because she was ill. She reported gross earnings of \$259.00 when she filed her weekly-continued claim for benefits and received a benefit payment for that week of \$276.00.

Claimant worked 33 hours from June 14, 2020 through June 20, 2020. She worked a reduced schedule because she was ill. She reported gross earnings of \$382.00 when she filed her weekly-continued claim for benefits and received a benefit payment for that week of \$153.00.

On or about June 4, 2020, the claimant received a note from her physician which opined that a medication the claimant was taking could produce a fever as a side effect. See Exhibit 1. The doctor's note also stated that it was not certain that this was the cause of her fevers. See Exhibit 1. On June 5, 2020, the employer made a reasonable accommodation to allow the claimant to work if she presented with a fever of 100.2 degrees Fahrenheit up to 102.2 degrees Fahrenheit and had no other symptoms of illness. See Exhibit 1. Any reduction in hours were not due to a short-term layoff. The employer had full-time work available to the claimant beginning April 12, 2020. Claimant's reduction in hours worked effective April 12, 2020 was due to personal illness.

The issue of whether the claimant has been overpaid benefits and overpaid Federal Pandemic Unemployment Compensation (FPUC) benefits shall be remanded to the Benefits Bureau for an initial investigation and determination.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code § 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", subparagraph (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 Code § 96.19(38)b provides:

As used in this chapter, unless the context clearly requires otherwise:

38. "Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work, or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

Iowa Admin. Code r. 871-24.23(1) provides:

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

- (1) An individual who is ill and presently not able to perform work due to illness.

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.

Iowa Admin. Code. r. 871-24.1(139) provides:

(139) Week of unemployment. A week during which an individual performs no work and earns no wages, except as indicated and has earnings which do not exceed the earnings limit.

- a. Week of partial unemployment. A week in which an individual worked less than the regular full-time hours for such individual's regular employer, because of lack of work, and earned less than the weekly benefit amount (plus the partial earnings allowance, if any, in the state's definition of unemployment) but more than the partial earnings allowance, so that, if eligible for benefits, the claimant received less than such claimant's full weekly benefit amount plus \$15.
- b. Week of part total unemployment. A week of otherwise total unemployment during which an individual has odd jobs or subsidiary work with earnings in excess of the amount specified in the state law as allowable without resulting in a reduction in the individual's benefit payment.
- c. Week of total unemployment. A week in which an individual performs no work and earns no wages.

Iowa Admin. Code r. 871-24.18 provides:

Wage-earnings limitation. An individual who is partially unemployed may earn weekly a sum equal to the individual's weekly benefit amount plus \$15 before being disqualified for excessive earnings. If such individual earns less than the individual's weekly benefit amount plus \$15, the formula for wage deductions shall be a sum equal to the individual's weekly benefit amount less that part of wage, payable to the individual with respect to that week and rounded to the lower multiple of one dollar, in excess of one-fourth of the individual's weekly benefit amount.

This rule is intended to implement Iowa Code sections 96.3, 96.4 and 96.19(38).

The burden is on the claimant to establish that she is able to work and available for work within the meaning of the statute. Iowa Code § 96.6(2); Iowa Admin. Code r. 871-24.22. In this case, the claimant was unable to work due to several different types of illnesses, including a fever, migraine, bronchitis, flu, and sinus infection. It is unknown the exact weeks in which these occurred; however, the claimant was never off of work due to a short-term layoff or due to the employer's lack of work for her. A reasonable accommodation was made to the claimant to return to work with an elevated body temperature as that may have been a side effect of her medication. She continued to miss work ever after this accommodation was made to her.

The claimant has failed to establish that she was able to and available for work during the time in which she was unemployed. Further, claimant was disqualified from receipt of benefits due to

excessive earnings for the week-ending May 9, 2020. Benefits are denied effective April 12, 2020 due to the claimant failing to establish that she was able to and available for work.

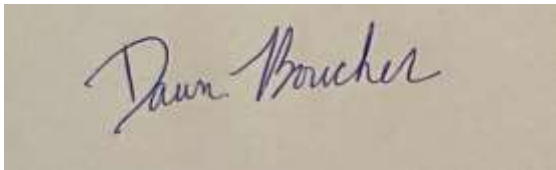
**DECISION:**

The July 9, 2020 (reference 01) decision is reversed. Claimant has failed to establish that she was able to and available for work. Benefits are denied effective April 12, 2020.

**REMAND:**

The issue of whether the claimant has been overpaid benefits and FPUC benefits is remanded to the Benefits Bureau for an initial investigation and determination.

*This decision denies unemployment insurance benefits funded by the State of Iowa. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits. See Note to Claimant below.*



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Dawn Boucher  
Administrative Law Judge

September 9, 2020  
Decision Dated and Mailed

db/sam

**Note to Claimant**

- This decision determines you are not eligible for regular unemployment insurance benefits funded by the State of Iowa under state law. 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 you do not qualify for regular unemployment insurance benefits funded by the State of Iowa under state law, you may qualify for benefits under the Federal Pandemic Unemployment Assistance (“PUA”) section of the Coronavirus Aid, Relief, and Economic Security Act (“Cares Act”) that discusses eligibility for claimants who are unemployed due to the Coronavirus.
- **You will need to apply for PUA to determine your eligibility under the program.**  
For additional information on how to apply for PUA go to:  
<https://www.iowaworkforcedevelopment.gov/pua-information>.
- If you are denied regular unemployment insurance benefits funded by the State of Iowa

and wish to apply for PUA, please visit:

<https://www.iowaworkforcedevelopment.gov/pua-information> and scroll down to “Submit Proof Here.” You will fill out the questionnaire regarding the reason you are not working and upload a picture or copy of your fact-finding decision. Your claim will be reviewed for PUA eligibility. If you are eligible for PUA, you will also be eligible for Federal Pandemic Unemployment Compensation (FPUC) until the program expires. Back payments PUA benefits may automatically be used to repay any overpayment of state benefits. If this does not occur on your claim, you may repay any overpayment by visiting: <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment-and-recovery>.

- If you have applied and have been approved for PUA benefits, this decision will **not** negatively affect your entitlement to PUA benefits.