

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**DEBBIE OELRICH**  
Claimant

**THE UNIVERSITY OF IOWA**  
Employer

**APPEAL 21A-UI-04488-DZ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/16/20**  
**Claimant: Appellant (4)**

Iowa Code § 96.4(3) – Able to and Available for Work  
Iowa Admin. Code r. 871-24.23(10) – Leave of Absence

**STATEMENT OF THE CASE:**

Debbie Oelrich, the claimant/appellant, filed an appeal from the January 25, 2021, (reference 01) unemployment insurance decision that denied benefits as of November 15, 2020. The parties were properly notified about the hearing. A telephone hearing was held on April 8, 2021. Ms. Oelrich participated and testified. The employer participated through Jessica J Wade, human resources business analyst.

**ISSUES:**

Is Ms. Oelrich able to and available for work?  
Is Ms. Oelrich on a leave of absence?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Oelrich began working for the employer on December 16, 2005. She worked as a full-time certified medical assistant (CMA). Her last day at work was November 9, 2020 and her employment ended on January 22, 2021.

Ms. Oelrich was injured on the job on May 29, 2019. She fell in an exam room while working and injured her hand/arm. Ms. Oelrich had surgery on December 9, 2019. She returned to work in late January 2020 on light duty. In July 2020, as part of the worker's compensation process, Ms. Oelrich took a functional evaluation to assess her abilities and functions as they relate to her job. As a result of the evaluation, Ms. Oelrich was released to return to work by the workers compensation doctor but she was permanently restricted from lifting more than 25 pounds with her injured hand/arm. One of the requirements of the CMA position is to be able to lift at least 25 pounds.

The employer told Ms. Oelrich that since she could not lift more than 25 pounds, she would be put in the employer's Americans with Disabilities Act (ADA) referral program. Ms. Wade testified that the program is an interactive process between the employer and the employee wherein a person from the employer's Disability Services Area works with employees and

employees' departments to identify limitations and accommodations for employees living with a disability. Under the program, Ms. Oelrich had 90 days, from August 11, 2020 through November 9, 2020, to find a different job with the employer, and if she did not, her employment would end. Ms. Oelrich continued to do light duty work during the 90 day period. Ms. Oelrich applied to numerous jobs with the employer but was not hired in a new position.

During the 90 day period, the employer told Ms. Oelrich that she could use her accrued sick leave and vacation leave after the 90 day period. The employer also told Ms. Oelrich that she could simultaneously take unpaid Family Medical Leave Act (FMLA) leave for three months after the 90 days to maintain her health insurance. The employer told Ms. Oelrich that she did not need to complete paperwork for the FMLA leave. The employer told Ms. Oelrich that if she did not take FMLA leave, she would not be able to maintain her health insurance. Ms. Oelrich took sick leave and vacation leave from November 10, 2020 through December 10, 2020 and she took unpaid FMLA leave beginning on November 10, 2020 to maintain her health insurance.

In January 2020, Ms. Oelrich received a letter from the employer dated January 20, 2021. The letter informed Ms. Oelrich that her employment would end on January 22, 2021 because her FMLA eligibility ended on December 31, 2020. Ms. Oelrich contacted the employer and asked why her FMLA eligibility had ended when the employer told her that she could take FMLA for three months beginning November 10, 2020. The employer told Ms. Oelrich that in order to continue being eligible for FMLA leave after December 21, 2020, she would have had to work at least 1,250 hours during the 2020 calendar year and since she did not she was no longer eligible for FMLA. Ms. Oelrich's employment ended on January 22, 2021.

The issue of Ms. Oelrich's separation from employment has not yet been determined by the Benefits Bureau of Iowa Workforce Development.

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

For the reasons that follow, the administrative law judge concludes that Ms. Oelrich was on a leave of absence from November 15, 2020, the effective date of her claim, through December 31, 2020 when her FMLA leave ended and Ms. Oelrich is able to and available for work from January 1, 2021 through January 22, 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. 871-24.23(10) and (35) provide:

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.

(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.

In this case, the employer did not accommodate Ms. Oelrich after her work-related injury to enable her to continue in employment. Instead, the employer refused to allow her to work as a CMA because of her lifting restriction, put the burden on her to find a new job or lose her CMA job, and forced her to choose between taking FMLA leave to keep her health insurance for a few more months and ending her employment on November 9, 2020. While Ms. Oelrich may have preferred to have not been forced to take either FMLA leave beginning November 10, 2020 or end her employment on November 9, 2020, Ms. Oelrich, in fact, did take FMLA leave beginning November 10, 2020. Based on what the employer told her, Ms. Oelrich thought she would be on FMLA leave until February 8, 2020. The employer then told Ms. Oelrich after the fact that her FMLA leave had ended on December 31, 2020.

Ms. Oelrich was able to and available for work from January 1, 2020 through January 22, 2020 with the 25 pound lifting restriction. However, instead of accommodating Ms. Oelrich after her work-related injury to enable her to continue in employment, the employer ended her employment on January 22, 2020. Benefits are allowed from January 1, 2020 through January 22, 2020.

Even though Ms. Oelrich is not eligible for regular unemployment insurance benefits under state law from November 10, 2020 through December 31, 2020, she may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136 during this time period. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive up to the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed.

**DECISION:**

The January 25, 2021, (reference 01) unemployment insurance decision is modified in favor of the appellant, Ms. Oelrich. Ms. Oelrich is able to and available for work from January 1, 2021 through January 22, 2021 and regular, state-funded unemployment insurance benefits are allowed during this time period.

**REMAND:**

The issue of Ms. Oelrich's separation from employment is remanded to the Benefits Bureau of Iowa Workforce Development for investigation and determination.



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Daniel Zeno  
Administrative Law Judge

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April 13, 2021  
Decision Dated and Mailed

dz/lj

**NOTE TO CLAIMANT:**

- This decision determines you are not eligible for regular unemployment insurance benefits under state law from November 10, 2020 through December 31, 2020. 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 under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA, you may be required to repay the benefits you've received so far.**