

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MADLINE A WILLIAMS

Claimant

APPEAL 20A-UI-05978-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DOLLAR TREE STORES INC

Employer

OC: 03/22/20

Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(10) – Able & Available – Availability Disqualifications
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
PL 116-136, Sec. 2104(b) – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

On June 12, 2020, the claimant filed an appeal from the June 2, 2020, (reference 01) unemployment insurance decision that denied benefits based on claimant's availability for work. The parties were properly notified about the hearing. A telephone hearing was held on July 17, 2020. Claimant participated personally and through her daughter, Teonta Williams-Neely. Employer participated through store manager Amber Ozzello. Claimant's Exhibit A was received.

ISSUES:

Is the claimant able to and available for work?
Is the claimant on a voluntary leave of absence?
Was the claimant overpaid unemployment insurance benefits?
Is the claimant eligible for Federal Pandemic Unemployment Compensation?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on November 14, 2017. Claimant works for employer as a part-time assistant manager.

Claimant's last day of work was March 20, 2020. At that time, the COVID 19 pandemic was becoming well known in Iowa. Claimant is above the age of 60 and she and her husband have underlying medical conditions that put them at risk of complications if they contract COVID 19. Employer was not supplying employees with personal protection equipment at that time.

Claimant told an assistant manager, Gayle Sheely, that she would not be at work until the pandemic was under control and she felt safe to return. Claimant is keeping in contact with employer on a regular basis. Employer is holding claimant's job for her, although claimant did not make the specific request for employer to do so.

Claimant has received regular, state funded unemployment insurance benefits and Federal Pandemic Unemployment Compensation (FPUC) benefits since filing this claim with an effective date of March 22, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work effective March 22, 2020.

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. 871-24.23(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.

Here, claimant did not explicitly request a leave of absence. She said she was not coming to work until the pandemic was under control or the work environment became safe. Employer agreed that was fine and is holding claimant's job for her. Claimant keeps in regular contact with employer and she has not resigned.

Whether those specific words were used, in effect, claimant is on a leave of absence. Furthermore, claimant is limiting her availability for work due to her age and underlying health conditions that put her at high risk if she contracts COVID 19, a global pandemic which is certainly not under control at the time being. Claimant has not established she is able to and available for work, even under the United States Department of Labor's guidance to flexibly interpret this requirement. See Unemployment Insurance Program Letter No. 10-20. Therefore, claimant is not eligible for regular, state-funded unemployment insurance benefits from the effective date of her claim.

The administrative law judge would note that she does not disagree with claimant's decisions or point of the view on the matter. The fact remains, though, that Chapter 96 of the Iowa Code does not allow benefits in this situation and the administrative law judge must follow the law.

Even though claimant is not eligible for regular unemployment insurance benefits under state law, 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. 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 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.

The administrative law judge will not consider the issue of whether claimant has been overpaid benefits prior to the denial decision being issued, as claimant may be eligible for Pandemic Unemployment Assistance, and in that case, such a decision would be unnecessary. However, the administrative law judge cautions claimant that if she is not approved for PUA, she may be found to have been overpaid benefits and will have to repay those benefits.

DECISION:

The June 2, 2020, (reference 01) unemployment insurance decision is affirmed. The claimant is not available for work effective March 22, 2020, and regular, state-funded unemployment insurance benefits are denied. Claimant may be eligible for Pandemic Unemployment Assistance, so an overpayment will not be issued at this time.



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

July 23, 2020
Decision Dated and Mailed

cal/scn

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits 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 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.**