

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**ABBIGAIL L GOVIG**  
Claimant

**APPEAL NO: 20A-UI-10629-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SEQUEL YOUTH SERVICES OF  
WOODWARD**  
Employer

**OC: 05/03/20**  
**Claimant: Appellant (4R)**

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Iowa Code Section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

Abigail Govig filed an appeal from the August 27, 2020, reference 02, decision that denied benefits effective May 3, 2020, based on the deputy's conclusion that Ms. Govig was unable to perform work due to injury. After due notice was issued, a hearing was held on October 19, 2020. Ms. Govig participated. Marcia Dodds, Human Resources Director, represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 20A-UI-10628-JTT. Exhibit 1 was received into evidence. The administrative law judge took official notice of the claimant's weekly claims (KCCO).

**ISSUE:**

Whether the claimant was able to work and available for work beginning May 3, 2020.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Abigail Govig was employed by Sequel Youth Services of Woodward as a full-time Youth Counselor. She began the employment in October 2019 and last performed work for the employer on March 17, 2020. Ms. Govig supervised behaviorally disordered boys and girls in residence to ensure their safety and security. Ms. Govig would have to physically intervene as necessary.

On March 17, 2020, Ms. Govig went off work due to a suspected COVID-19 illness. Ms. Govig underwent COVID-19 testing. On March 25, 2020, Ms. Govig received her COVID-19 test results which revealed she did not have COVID-19. Ms. Govig was released to return to work at that time.

On March 25, 2020, Ms. Govig was involved in a non-work-related automobile collision in which she suffered injury to her ankle. The injury was later diagnosed as torn ligaments that required surgical intervention. On the date of the collision, Ms. Govig was transported by ambulance to an emergency room. The emergency room physician kept Ms. Govig off work until she could follow up with her primary care physician. Ms. Govig promptly notified the employer of her need to remain off work due to her injury.

On March 28 2020, Ms. Govig first saw her primary care physician, who referred Ms. Govig to a foot specialist.

Ms. Govig first saw the foot specialist on April 1 or 2, 2020. Before Ms. Govig or the specialist knew the full extent of her injury, the specialist released Ms. Govig to return to work so long as she wore an orthopedic boot and limited the weight she placed on her foot. Given the work environment and the nature of Ms. Govig's assigned duties, Ms. Govig was unable to perform the essential functions of her Youth Counselor job. The employer declined to allow Mr. Govig to return to the work due to her injured ankle.

Effective April 2, 2020, Ms. Govig commenced a period of approved administrative leave without pay. Ms. Govig had not worked for the employer long enough to qualify for job-protected leave under the Family and Medical Leave Act (FMLA). Ms. Govig provided the employer with appropriate medical documentation to support her need to be away from work.

On April 21, 2020, Ms. Govig provided the employer with updated medical documentation that supported her continued need to be off work due to her injury. The documentation indicated that Ms. Govig was scheduled to undergo an MRI during the week of April 27, 2020, which would lead to further assessment of her health status and ability to work.

On April 27, 2020, the employer sent Ms. Govig a memorandum approved leave without pay to April 30, 2020, but that terminated the employment at that time. The employer referenced Ms. Govig's ineligibility for job protection under the Family and Medical Leave Act. The employer invited Ms. Govig to reapply once she was released to work without restrictions. Ms. Govig called the employer in response to receiving the letter. The employer referenced the FMLA ineligibility and requested that Ms. Govig return her keys.

Ms. Govig established an original claim for unemployment insurance benefits that was effective May 3, 2020. Ms. Govig commenced making weekly benefits and receiving regular and Federal Pandemic Unemployment Compensation (FPUC) benefits. At the time Ms. Govig established her claim for benefits, Iowa Workforce Development had in place a COVID-19 based waiver of the work search requirement. The waiver remained in place through the benefit week that ended September 5, 2020. As of the October 19, 2020 appeal hearing date, Ms. Govig had made weekly claims through the benefit week that ended October 10, 2020.

On May 29, 2020, Ms. Govig underwent surgery to reattach two ligaments in her ankle. The surgeon thereafter kept Ms. Govig entirely off work until July 30, 2020. In mid-July, the surgeon had Ms. Govig transition back to wearing the orthopedic boot. By July 30, 2020, Ms. Govig was able to wear a shoe and was released to return to work without restrictions. Ms. Govig did not contact Sequel about returning to that employer.

Once Ms. Govig was released to return to work, she commenced her search for new employment. Ms. Govig is a high school graduate and has completed some college coursework. Ms. Govig is a certified nursing assistant (CNA). She has worked in childcare, healthcare and retail sales. During the weeks that followed the September 6, 2020 re-imposition of the work search requirement through the benefit week that ended October 3, 2020, Ms. Govig made multiple applications each week in search of new employment. During the week that ended October 10, 2020, Ms. Govig called to followed up with some places where she had applied, but did not otherwise search for new employment.

## REASONING AND CONCLUSIONS OF LAW:

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:

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.

(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.

From the time Ms. Govig established the claimant for benefits that was effective May 3, 2020 until July 30, 2020, Ms. Govig was under the care of a physician, had not been released to work, and was not available for work within the meaning of the law. Ms. Govig is not eligible for benefits for the period of May 3, 2020 through the benefit week that ended August 1, 2020. During the period of August 2, 2020 through September 5, 2020, Ms. Govig was physically and mentally able to work and met the availability requirement during this time when the work search requirement continued to be suspended. Ms. Govig is eligible for benefits for the period of August 2, 2020 through September 5, 2020, provided she meets all other eligibility requirements. During the period of September 6, 2020 through October 3, 2020, Ms. Govig continued to be able to work, available for work, and engaged in an active job search. Ms. Govig is eligible for benefits for the period of September 6, 2020 through October 3, 2020, provided she meets all other eligibility requirements. During the week that ended October 10, 2020, Ms. Govig did not engage in an active and earnest search for new employment and thereby did not meet the eligibility requirement. Ms. Govig is not eligible for benefits for the week that ended October 10, 2020.

This matter will be remanded to the Benefits Bureau for a determination of whether Ms. Govig has been able to work and available for work during the period beginning October 11, 2020.

**DECISION:**

The August 27, 2020, reference 02, decision is modified as follows. The claimant did not meet the able and available requirements during the period of May 3, 2020 through the benefit week that ended August 1, 2020 and is not eligible for benefits for that period. The claimant met the able and available requirements during the period of August 2, 2020 through October 3, 2020 and is eligible for benefits for that period, provided she meets all other eligibility requirements. The claimant did not meet the work search or availability requirement for the week that ended October 10, 2020 and is not eligible for benefits for that week.

This matter will be **remanded** to the Benefits Bureau for a determination of whether Ms. Govig has been able to work and available for work during the period beginning October 11, 2020.



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James E. Timberland  
Administrative Law Judge

December 3, 2020  
Decision Dated and Mailed

jet/scn

**NOTE TO CLAIMANT:**

- This decision determines you are not eligible for regular unemployment insurance benefits under state law for the period of May 3, 2020 through August 1, 2020 and for the week that ended October 10, 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 have received.**