

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

PEYTON C PETERS

Claimant

APPEAL NO. 20A-UI-11125-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACCESSIBLE MEDICAL STAFFING

Employer

OC: 07/05/20

Claimant: Respondent (2R)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 2, 2020, reference 01, decision that allowed benefits to the claimant effective July 5, 2020, provided she met all other eligibility requirements, based on the deputy's conclusion that the claimant was able to work and available for work, but temporarily laid off. After due notice was issued, a hearing was held on October 30, 2020. Claimant Peyton Peters did not provide a telephone number for the appeal hearing and did not participate. Mindy Butler, Administrator, represented the employer. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX and WAGE-A.

Note: at the time of the hearing, the employer advised that the claimant was working on behalf of the employer in an assignment at a nursing home some two hours away from the employer's office.

ISSUES:

Whether the claimant was able to work and available for work during the three-week period of July 5, 2020 through July 25, 2020.

Whether the claimant was partially and/or temporarily unemployed during the three-week period of July 5, 2020 through July 25, 2020.

Whether the employer's account may be charged for benefits for the three-week period of July 5, 2020 through July 25, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Accessible Medical Staffing is a temporary employment agency that supplies temporary staff to nursing homes. Peyton Peters commenced her employment with the employer in June 2019 and has performed work as a Certified Nursing Assistant (CNA) in a series of short temporary work assignments. Ms. Peters continues in the employment. Ms. Peters' wages is \$18.00 per hour. Ms. Peters chooses the shifts she wants to work and generally works one to four single-day shifts per week.

On July 7, 2020, Ms. Peters notified Mindy Butler, Administrator, that she had tested positive for COVID-19, that she had symptoms and that she was not feeling well. Ms. Peters had arranged the COVID-19 screening test. Ms. Peters provided the employer with a screen-shot of her positive COVID-19 test result. Ms. Peters had not accepted any upcoming shifts and therefore none needed to be cancelled in connection with Ms. Peters' illness. The parties understood that nursing facilities would be unwilling to grant entrance to Ms. Peters while she was ill with COVID-19 or during an appropriate 10 to 14-day quarantine period. But for Ms. Peters' illness, the employer would have had the same work for her. The employer did not compensate Ms. Peters for her time away from work. Ms. Peters next performed work for the employer on July 29, 2020.

Ms. Peters established an original claim for unemployment insurance benefits that was effective July 5, 2020. Iowa Workforce Development set Ms. Peters' weekly benefit amount at \$307.00. Accessible Medical Staffing is a base period employer. Ms. Peters made weekly claims for the three weeks that ended July 11, 18 and 25, 2020. For each week, Iowa Workforce Development paid \$307.00 in regular benefits and \$600.00 in Federal Pandemic Unemployment Compensation (FPUC).

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(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(1) and (10) 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.

...

(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 Code section 96.19(38) provides:

"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.

If a claimant individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. Iowa Code section 96.7(2)(a)(2)(a).

Ms. Peters did not participate in the appeal hearing and did not present any evidence to meet her burden of proving that she was able to work and available for work during the three-week period of July 5-25, 2020. The evidence in the record establishes that Ms. Peters was ill and unable to work during that period. The evidence establishes that Ms. Peters notified the employer of her need to be away from work and that the employer acquiesced. In other words, the evidence establishes that Ms. Peters was on a leave of absence during the period of July 5-25, 2020. Ms. Peters is not eligible for regular benefits for the period of July 5-25, 2020.

Because the employer continued to have work available for Ms. Peters during that period, the employer's account shall not be charged for benefits for the period of July 5-25, 2020.

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

DECISION:

The September 2, 2020, reference 01, decision is reversed. The claimant was not able to work or available for work during the period of July 5-25, 2020. Accordingly, the claimant is not eligible for regular state benefits for that period. The employer's account will not be charge for benefits for the period of July 5-25, 2020.

This matter is remanded to the Benefits Bureau for entry of overpayment decisions regarding the regular benefits and the FPUC benefits the claimant received for the period of July 5-25, 2020.



James E. Timberland
Administrative Law Judge

November 3, 2020
Decision Dated and Mailed

jet/mh

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 have received.**