

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

**KATHY RUBEL
501 JACKSON ST
HAVELOCK IA 50546-7505**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

APPEAL NO. 21A-UI-13288-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

APPEAL RIGHTS:

This Decision Shall Become Final, unless within 15 days from the mailing date below the administrative law judge's signature on the last page of this decision, you or any interested party:

Appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to:

***Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
OR
Fax Number: (515)281-7191***

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

The name, address and social security number of the claimant.

A reference to the decision from which the appeal is taken.

That an appeal from such decision is being made and such appeal is signed.

The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

ONLINE RESOURCES:

UI law and administrative rules:

<https://www.iowaworkforcedevelopment.gov/unemployment-insurance-law-and-administrative-rules>

UI Benefits Handbook:

<https://www.iowaworkforcedevelopment.gov/unemployment-insurance-claimant-handbook>

Employer UI Handbook: <https://www.iowaworkforcedevelopment.gov/employer-handbook>

Report UI fraud: <https://www.iowaworkforcedevelopment.gov/report-fraud>

Employer account access and information: <https://www.myiowaui.org/UITIPTaxWeb/>

National Career Readiness Certificate and Skilled Iowa Initiative: <http://skillediowa.org/>

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KATHY RUBEL
Claimant

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

APPEAL NO. 21A-UI-13288-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/21/21
Claimant: Appellant (5)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

The claimant, Kathy Rubel, filed a timely appeal from the May 27, 2021, reference 02, decision that denied benefits effective March 21, 2021, based on the deputy's conclusion that the claimant was unable to perform work due to illness. After due notice was issued, a hearing was held on August 6, 2021. Claimant participated. Exhibits A through D were received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, DBIN, KPYX, NMRO, WAGE-A, the May 27, 2021, reference 01, decision, and the June 22, 2021 Assessment for PUA.

ISSUES:

Whether the claimant was able to work and available for work beginning March 21, 2021.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant established a new original claim for benefits and a second benefit year that was effective March 21, 2021. Iowa Workforce Development set the weekly benefit amount for regular benefits at \$239.00. By the time of the appeal hearing, the claimant had made weekly claims for each of the weeks between March 21, 2021 and July 31, 2021. The claimant provided the same information for each weekly claim. The claimant reported that she was not working, that she was able to work and available for work, that she had not refused any work, and that she had no wages to report. Iowa Workforce Development has not paid regular benefits in connection with the new benefit year that started March 21, 2021.

The new original claim that was effective March 21, 2021 followed a prior benefit year that was in effect from March 22, 2020 until March 20, 2021. The claimant made weekly claims for each of the 52 weeks of that benefit year and received benefits for each of those weeks. The benefits the claimant received included \$5,954.00 in regular benefits, \$5,725.00 in PEUC benefits, \$13,800.00 in FPUC benefits, and \$1,800.00 in LWAP benefits.

At the time the claimant established the new benefit year that was effective March 21, 2021, she had most recently been employed by Pocahontas Farm & Home, Inc., doing business as True

Value, and had most recently performed work for that employer on or about March 24, 2020. The claimant worked for that employer as a full-time secretary, clerk and bookkeeper. The claimant's most recent wage in the employment was \$10.85. The claimant's work hours in that employment were 8:00 a.m. to 5:00 p.m.

The claimant advises that she has suffered from asthma since she was a baby. At the same time, the claimant advises that her asthma went away when she was an adolescent, but later came back. The claimant advises that she has periodic medical wellness checks.

The claimant advises that her primary care provider referred her to a pulmonologist. The claimant indicates the pulmonologist ran tests to make certain her asthma was under control and concluded that her breathing was "normal and good." The claimant advises that the pulmonologist wrote a note concerning the claimant's inability to work in places that lacked a mask mandate and social distancing. The claimant advises that she had not had a similar restriction in the past.

The claimant advises that she no longer sees, and can no longer see, the pulmonologist and that the pulmonologist returned to India.

The claimant advises that she is not interested in following the note that restricts her from working in places that have a mask mandate, that she has had asthma her whole life and had worked without issues related to her asthma. However, the claimant made a contradictory statement when she submitted her application for PUA benefits on May 26, 2021. See below.

The claimant advises that her separation from True Value occurred in the context of the employer wanting her to be away from the workplace during the COVID-19 pandemic due to her potential health risk.

The claimant advises that she has received both doses of the Pfizer vaccine and received her second dose on March 26, 2021.

The claimant advises that she has searched for work since she established the original claim for benefits that was effective March 21, 2021. The claimant has a general education diploma (GED) and has received additional training in completing tax returns. The claimant lives in the rural community of Havelock, Iowa. The claimant thinks the population of Havelock is 74. The claimant advises that the communities of Mallard, Pocahontas and Emmetsburg are all within reasonable driving distance of Havelock. The claimant advises that all of her contacts have been in-person contacts, except as noted below. Since the claimant established the new original claim that was effective March 21, 2021, the claimant has not completed a single application. Nor has the claimant mailed or otherwise distributed any resumes. The contacts the claimant testified to appear over time not to represent an active and earnest search for new employment.

For the week that ended March 27, 2021, the claimant advises she spoke with Mike at Gertz Garage and Ron at R and B Lumber.

For the week that ended April 3, 2021, the claimant advises she spoke with an office person at Pocahontas Ford, but does not know the name of the person she contacted. The claimant advises she also spoke with Craig at Pocahontas State Bank regarding whether the bank had office work available.

For the week that ended April 10, 2021, the claimant advises she spoke with Rhonda at Pro Cooperative and with Ron at Seiler in Pocahontas.

For the week that ended April 17, 2021, the claimant advises she called Richardson Service in Laurens and Highway 10 Hardware in Laurens.

For the week that ended April 24, 2021, the claimant advises she spoke with Julie at Hearth and Home in Laurens and at Napa Auto in Pocahontas.

For the week that ended May 1, 2021, the claimant advises she spoke with Steve at Availa Bank in Pocahontas and with Jeff at Pocahontas Sales & Service.

For the week that ended May 8, 2021, the claimant advises she spoke with her husband, who operates Rubel Construction and with Mike at Shamrock Lanes, a bowling alley.

For the week that ended May 15, 2021, the claimant spoke with the owner of "Blooming Creations" in Emmetsburg, but gets the name of the business wrong and cannot remember of the name of the person she spoke with. The correct business name is Blossoming Creations. The claimant also advises she went to a movie theatre that she knew was operated mostly by volunteers.

For the week that ended May 22, 2021, the claimant spoke with a person at Madsen Greenhouse and spoke with Shannon at the Heartland Coop gas station in Rolfe.

For the week that ended May 29, 2021, the claimant spoke with Denny at Rally Point, a bar in Laurens and to someone at Laurens Lanes, a bowling alley.

On May 26, 2021, the claimant submitted an application for Pandemic Unemployment Assistance (PUA). The claimant wrote:

Due to the Covid-19 Pandemic and my underlying medical condition (63), my former employer and my Dr. advised me not to go into work. My Employer told me to go on Unemployment until it was safe for me to return, however the business terminated me and my job is no longer available. My Dr. does not want me returning to work, quote from restriction note: "Work in a facility that mandates mask and social distancing. She has asthma and risk of severe Covid infection is high."

The claimant advises that she commenced re-contacting businesses she had earlier contacted.

For the week that ended June 5, 2021, the claimant re-contacted Mike at Gertz Garage. The claimant advises that the business performs oil changes and auto repairs. The claimant advises she inquired about scheduling appointments for the employer, but that the employer advised his wife performed those duties. The claimant re-contacted R and B Lumber to inquire about an office work or other work.

The claimant elected not to return to True Value to offer her services. The claimant advises that employer has a policy whereby if an employee leaves the employer will not rehire the employee. The claimant advises that things toward the end of her employment "got ugly" with Mary, the owner's daughter, but that she remains friends with the owner and with Mary's brother Patrick.

For the week that ended June 12, 2021, the claimant returned to Pocahontas State Bank and spoke with Craig and returned to Pocahontas Ford.

For the week that ended June 19, 2021, the claimant returned to Pro Cooperative and spoke with Rhonda and returned to Seiler's in Pocahontas, but both were still not hiring.

On June 22, 2021, an Iowa Workforce Development Benefits Bureau deputy issued an Assessment for PUA Benefits that allowed PUA benefits for the period beginning March 22, 2020.

For the week that ended June 26, 2021, the claimant returned to Richardson Service and spoke to Daryl, who confirmed the business was still not hiring. The claimant did not contact other employer's during the week that ended June 26, 2021.

For the week that ended July 3, 2021, the claimant returned to Napa Auto in Pocahontas and spoke with Don, who confirmed that employer was still not hiring. The claimant did not make other employer contacts that week.

For the week that ended July 10, 2021, the claimant returned to Availa Bank in Pocahontas and to Pocahontas Sales & Service.

The claimant did not think to explore and did not access indeed.com for job postings in the communities near Havelock. The claimant did not contact any local Casey's stores to see whether they were hiring. The claimant did not check with any local schools to see whether they were hiring. The claimant did not contact any temporary employment agencies operating in her area. The claimant states she "kept watching the paper."

For the week that ended July 17, 2021, the claimant returned to Shamrock Lanes in Emmetsburg and contacted a movie theater that had recently reopened in Pocahontas.

For the week that ended July 24, 2021, the claimant returned to Blossoming Creations and contacted the Riviera movie theater.

For the week that ended July 31, 2021, the claimant returned to Madsen Greenhouse and to the Heartland Cooper gas station in Rolfe.

During the week that ended August 7, 2021, the claimant returned to Rally Point and to Laurens Lanes.

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(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.

The weight of the evidence establishes that the claimant has not been able to work and available for work within the meaning of the law since she established the original claim for benefits that was effective March 21, 2021. Since that time, the claimant has been ostensibly under the care of a doctor and has not been released to return to work unless the workplace has a mask mandate and follows social distancing. While the claimant disavowed the medical restriction during her testimony, she affirmed and relied upon the medical restriction when filing her May 26, 2021 application for PUA benefits. A reasonable person would conclude the claimant would be able to obtain an updated medical release that omitted the mask mandate requirement, if she so desired. In addition, the weight of the evidence establishes that the claimant has engaged in a less than active and less than earnest search for new employment since she established the new benefit year. This is especially noteworthy given the year of weekly claims that preceded the new benefit year. She completed no applications, distributed no resumes, avoided contact with potential employer's likely to be hiring, repeatedly contacted employer's she knew were not hiring, and avoided accessing readily available online job search resources. Some weeks she contacted only one employer. Regular benefits are denied for the period beginning March 21, 2021. The able and available disqualification continued at the time of the August 6, 2021 appeal hearing.

DECISION:

The May 27, 2021, reference 02, decision is modified as follows. Since the claimant established the original claim for benefits that was effective March 21, 2021, she had not been able to work or available for work within the meaning of the law. Benefits are denied for the period beginning March 21, 2021. The able and available disqualification continued at the time of the August 6, 2021 appeal hearing.



James E. Timberland
Administrative Law Judge

November 4, 2021
Decision Dated and Mailed

jet/scn

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. 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. Individuals who do not qualify for regular unemployment insurance benefits, but who are unemployed for reasons related to COVID-19, may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.