

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALYSIA L ROE
Claimant

FRASE CONSTRUCTION INCORPORATED
Employer

APPEAL 20A-UI-13171-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Appellant (1/R)

Iowa Code § 96.4-3 – Able and Available
871 IAC 24.23(10) – Voluntary Leave of Absence

STATEMENT OF THE CASE:

Alysia Roe (claimant) appealed a representative's October 13, 2020, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits as of April 19, 2020, because she was not able and available to work at Frase Construction (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 16, 2020. The claimant participated personally. The employer participated by Jeremy Frase, Owner, and Melanie Frase, Office Manager. The administrative law judge took official notice of the administrative file.

ISSUE:

The issue is whether the claimant is available for work and whether the claimant was on an approved leave of absence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on March 16, 2019, as a secretary's assistant working 37.5 hours per week. When Covid-19 started, the employer had to cut some hours. It had no work for the claimant from March 18, 2020, through April 12, 2020.

The claimant returned and worked on April 13 and 14, 2020. She was on the schedule to work again on April 20, 2020. In the early morning hours of April 20, 2020, the claimant sent the employer an email indicating she would not be returning to work due to the pandemic. The claimant said she would return if the guidelines relaxed or if she could find suitable arrangements for childcare. The employer assumed the claimant needed time off and waited for contact from her.

The claimant's child could not go to school because it had closed. The claimant and the child's father discussed arrangements for childcare but nothing was decided because the claimant took care of the child. Her child's school opened in the fall of 2020. She had childcare again as of September 1, 2020. The claimant did not contact the employer again.

The claimant filed for unemployment insurance benefits with an effective date of March 15, 2020. Her weekly benefit amount was determined to be \$228.00. The claimant received benefits from March 15, 2020, to the week ending June 20, 2020. This is a total of \$2,924.83 in state unemployment insurance benefits after the separation from employment. She received \$2,052.00 in Pandemic Emergency Unemployment Compensation. She also received \$9,000.00 in Federal Pandemic Unemployment Compensation for the fifteen-week period ending July 25, 2020.

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. 871-24.23(1) and (10) provide:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(8) Where availability for work is unduly limited because of not having made adequate arrangements for child care.

(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.

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). When employees are unable to perform work, they are considered to be unavailable for work.

When employees request and are granted a leave of absence, they are considered to be voluntarily unemployed. Likewise, when an employee is spending working hours caring for a child, she is considered to be unavailable for work.

The claimant requested a leave of absence and the employer granted the request. During that leave the claimant was devoting her time and efforts to caring for her child. The claimant is considered to be voluntarily unemployed, or unavailable for work, during the period of the leave of absence and is not eligible to receive unemployment insurance benefits. She is considered to be unavailable for work as of April 19, 2020.

Even though the 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 claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

The issue of whether claimant has been overpaid unemployment insurance benefits, Pandemic Emergency Unemployment Compensation, and Federal Pandemic Unemployment Compensation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

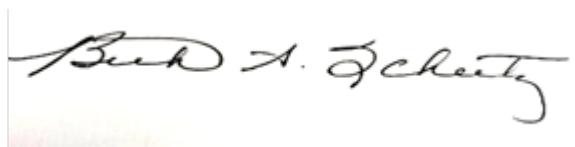
DECISION:

The representative's October 13, 2020, decision (reference 01) is affirmed. The claimant is considered to be unavailable for work and is not eligible to receive unemployment insurance benefits from April 19, 2020.

The issue of whether claimant has been overpaid unemployment insurance benefits, Pandemic Emergency Unemployment Compensation, and Federal Pandemic Unemployment Compensation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

Please notify the department immediately if the conditions change regarding your ability to work and you believe the disqualification can be removed.

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 currently 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>.



Beth A. Scheetz
Administrative Law Judge

December 29, 2020
Decision Dated and Mailed