

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**STEPHANIE S MAYEN**

Claimant

**PRAIRIE VIEW MANAGEMENT INC**

Employer

**APPEAL 21A-UI-02182-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/27/20**

**Claimant: Appellant (1/R)**

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment

Iowa Code § 96.4(3) – Ability to and Availability for Work

Iowa Admin. Code r. 871-24.23(26) – Able & Available – Availability Disqualifications

Iowa Code § 96.7(2)a(2) – Same Base Period Employment

**STATEMENT OF THE CASE:**

Stephanie Mayen (claimant) appealed a representative's December 18, 2020, decision (reference 03) that denied benefits based on her continued employment with Prairie View Management (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 19, 2021. The claimant participated personally. The employer participated by Nick Reiersen, Human Resources Specialist.

The employer offered and Exhibits One, Two, Three, and Four were received into evidence. The administrative law judge took official notice of the administrative file. 20A-UI-01494.S1 and 20A-UI-02182.S1 were heard at the same time.

**ISSUES:**

The issue is whether the claimant is eligible for total or partial unemployment benefits, still employed at the same hours and wages, whether the claimant is able and available for work and/or whether the employer's account is subject to charge.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked for the employer from July 10, 2019, through February 16, 2020. She was hired as a full-time community support assistant two. She earned \$14.05 per hour.

The claimant requested and the employer granted Family Medical Leave (FMLA) through September 23, 2020. The claimant's physician provided a release to return to work that stated "[Steph] reports she has been absent from work from 8/28/20-9/23/20". The employer told the claimant she needed a "release" from the physician. The claimant had issues with her physician providing the release. The claimant thought her verbal recitation of the doctor's intentions was

sufficient. The employer told the claimant she had seven days to produce the doctor's release. When the claimant asked the employer whether she would be terminated, the claimant did not feel she received a definitive answer.

The employer scheduled the claimant for three ten-hour shifts for the week ending October 3, 2020. The claimant went to her first shift and found she was able to clock in but unable to enter case notes. The employer forgot to activate the claimant's account after her leave. Another employee was working at the location.

The claimant incorrectly assumed she was terminated. The employer did not communicate that the other employee was placed there to help the claimant. The claimant told a supervisor she had been terminated without any supporting information. She did not appear for the remainder of her shifts or call the employer to ask questions. If she had worked all her hours, she would have earned \$421.00 in gross wages.

The following week, the employer contacted the claimant to ask why she was not at work. The claimant explained her confusion. The employer assigned her four ten-hour shifts for the week ending October 10, 2020. The claimant worked her shifts. She earned \$562.00 in gross wages. For the week ending October 17, 2020, the claimant earned \$420.00 in gross wages. For the week ending October 24, 2020, the claimant earned \$535.00 in gross wages.

The claimant requested and the employer granted FMLA from October 27, 2020, through January 18, 2021. The claimant returned to work on January 19, 2021, as a part-time employee. She quit work on February 18, 2021.

The claimant filed for unemployment insurance benefits with an effective date of September 27, 2020. Her weekly benefit amount (WBA) was determined to be \$388.00. The claimant received no state unemployment insurance benefits or Federal Pandemic Unemployment Compensation after September 27, 2020.

## **REASONING AND CONCLUSIONS OF LAW:**

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.

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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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. 871-24.23(1) and (10) provide:

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.

The first week at issue was the week ending October 3, 2020. The employer scheduled the claimant for work and she either left work or did not appear. She imagined words of termination that did not exist and chose not to work her hours. The claimant was not available for her scheduled shifts for the week ending October 3, 2020.

From October 4, 2020, through October 24, 2020, the claimant was at all times employed and earning wages from the employers. She cannot be considered totally or temporarily unemployed. The issue becomes whether she was partially unemployed. For a worker to be partially unemployed, she must be earning less than her WBA plus \$15.00. Each week the claimant earned greater than \$403.00, her WBA plus \$15.00. The claimant was not partially unemployed. She was not monetarily eligible for unemployment insurance benefits for the three weeks ending October 24, 2020.

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 due to a medical condition, 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. The claimant requested a medical leave of absence and the employer granted the request. The claimant is considered to be voluntarily unemployed, or unavailable for work, during the period of the medical leave of absence and is not eligible to receive unemployment insurance benefits from October 25, 2020, through January 16, 2021.

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.

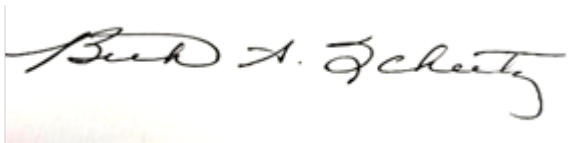
The issue of the claimant's separation from employment is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

#### **DECISION:**

The December 18, 2020, (reference 03) unemployment insurance decision is affirmed. The claimant is not able to work and available for work effective September 27, 2020. Regular unemployment insurance benefits funded by the state of Iowa are denied until such time as the claimant is able to and available for work.

The issue of the claimant's separation from employment is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

*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>.



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Beth A. Scheetz  
Administrative Law Judge  
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March 1, 2021  
Decision Dated and Mailed

bas/scn