

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**MARNA C NICOLA**  
Claimant

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**APPEAL 20A-UI-07748-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/05/20**  
**Claimant: Appellant (1)**

Iowa Code § 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Marna Nicola (claimant) appealed a representative's July 7, 2020, decision (reference 02) that concluded the claimant was not eligible to receive unemployment insurance benefits as of May 31, 2020. After a hearing notice was mailed to the claimant's last-known address of record, a telephone hearing was scheduled to be held on August 14, 2020. The claimant participated personally.

The claimant offered and Exhibit A was received into evidence. The administrative law judge took official notice of the administrative record.

**ISSUE:**

The issue is whether the claimant is able and available for work.

**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 granted Family Medical Leave (FMLA) from approximately April 7, 2020, through July 25, 2020. From April 7, 2020, through May 31, 2020, the claimant was under a doctor's orders not to work due to her medical condition and Covid-19. As of June 5, 2020, the claimant was under a doctor's orders not to work due to a surgery she had on June 5, 2020. The doctor released the claimant to return to work on July 26, 2020. The claimant started working again on July 26, 2020.

The claimant filed for unemployment insurance benefits with an effective date of April 5, 2020. Her weekly benefit amount was determined to be \$81.00. The claimant received benefits from April 12, 2020, to the week ending June 27, 2020. This is a total of \$5,234.00 in state unemployment insurance benefits after April 5, 2020. She also received \$6,600.00 in Federal Pandemic Unemployment Compensation for the eleven-week period ending June 27, 2020.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Admin. Code r. 871-24.23(1) 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.

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 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".

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. The claimant was restricted from working from April 7, 2020, through July 27, 2020. She is disqualified from receiving unemployment insurance benefits due to an inability to work.

The issue of the overpayment of benefits is remanded for determination.

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

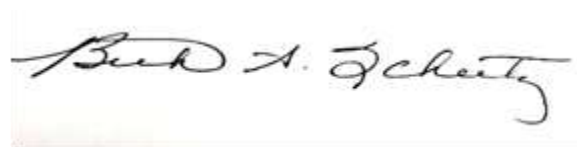
benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed. The claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

**DECISION:**

The representative's July 7, 2020 decision (reference 02) is affirmed. The claimant is disqualified from receiving unemployment insurance benefits because of a medical inability to work for the employer. Benefits are denied through July 25, 2020.

The issue of the overpayment of benefits is remanded for determination.

*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 due to disqualifying separations, 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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August 24, 2020  
Decision Dated and Mailed

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