

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

NATALIE R HORTON
Claimant

GRAPETREE MEDICAL STAFFING INC
Employer

APPEAL NO. 20A-UI-08925-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/26/20
Claimant: Appellant (1/R)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Natalie Horton filed a timely appeal from the July 15, 2020, reference 01, decision that denied benefits effective April 26, 2020, based on the deputy's conclusion that Ms. Horton was unable to work due to a surgery and therefore did not meet the availability requirements. After due notice was issued, a hearing was held on September 11, 2020. Ms. Horton participated. Elizabeth Soper represented the employer. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX and WAGE-A.

ISSUES:

Whether the claimant was able to work and available for work for the period of April 26, 2020 through July 18, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Natalie Horton established an original claim for benefits that was effective April 26, 2020. Iowa Workforce Development set her weekly benefit amount at \$116.00. GrapeTree Medical Staffing is Ms. Horton's primary base period employer. Ms. Horton made weekly claims for each of the weeks between April 26, 2020 and July 18, 2020. Ms. Horton received \$116.00 in regular benefits and \$600.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits for each of the weeks between April 26, 2020 and July 11, 2020.

At the time Ms. Horton established her claim for benefits in April 2020, she had most recently worked for GrapeTree in August 2019. When Ms. Horton was working for GrapeTree, she did so as a part-time, PRN/on-call, certified nursing assistant (CNA) and generally worked 16 to 30 hours per week. Ms. Horton would be assigned to work at various nursing facilities and her duties would include feeding, bathing, dressing and otherwise caring for and assisting elderly residents in activities of daily living.

On December 13, 2019, Ms. Horton suffered an injury to her right hand when she attempted to protect herself from an assault. Ms. Horton is right-handed. The injury was a broken third metacarpal bone. The injury required surgery and Ms. Horton underwent surgery on

December 18, 2019. The surgery went well, but Ms. Horton had a long recovery. Ms. Horton's hand remained swollen for an extended period. For an extended period, Ms. Horton had to keep her hand elevated. Ms. Horton could not lift anything with her right hand for a couple months after the surgery. When Ms. Horton established her claim for unemployment insurance benefits in April 2020, she was still in a removable "half-cast" and restricted to lifting no more than five pounds. Ms. Horton's doctor had warned her that her hand could easily re-break.

GrapeTree became aware of Ms. Horton's broken hand on January 24, 2020. By that time, Ms. Horton had been away from the employment for more than five months. Under GrapeTree's policies, an absence of six months would result in Ms. Horton being removed from the employer's employee roster. The employer follows up with employees as they are approaching the six-month milestone. When GrapeTree followed up with Ms. Horton in January and learned of her hand injury, the employer was under the belief that Ms. Horton might just have another four or five weeks of healing left. GrapeTree had Ms. Horton commence a leave of absence to preserve the employment relationship. Ms. Horton subsequently decided she would be unable to return to GrapeTree because of ongoing issues with her hand, but did not communicate this to GrapeTree.

Ms. Horton began a different part-time employment with Party City in February 2020. Ms. Horton worked as a cashier in a party supplies store. She usually worked 15 to 27 hours per week. Party City accommodated Ms. Horton's right-hand lifting restriction. Ms. Horton was temporarily laid off from the Party City effective March 17, 2020 in response to the Governor's State Public Health Emergency Declaration in which the Governor directed non-essential retail businesses to close to the public to slow community spread of COVID-19.

Ms. Horton waited more than a month after she was laid off before she established her unemployment insurance claim. Before Ms. Horton established her claim, GrapeTree contacted her March 25, 2020 and on April 20, 2020. In connection with the April 20, 2020 contact, Ms. Horton told the GrapeTree representative that her doctor had left the decision to return to GrapeTree to her discretion, but that she did not wish to return to GrapeTree at that time.

At about the time Ms. Horton established her claim for benefits, she learned she was pregnant and that her pregnancy was high-risk. Ms. Horton experienced complications early in her pregnancy that made it necessary for her to remain off work pursuant her doctor's recommendation. On May 8, 2020, a GrapeTree representative left Ms. Horton a voicemail message. Ms. Horton did not respond to the message. Ms. Horton had decided to remain off work until her baby was born. Ms. Horton was still off work in July 2020, when she contracted COVID-19 and became very sick with that illness.

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(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. 871-24.22(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) 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.

The evidence in the record establishes that Ms. Horton was not able to work and available for work within the meaning of the law from April 26, 2020 through the benefits week that ended July 18, 2020, when she discontinued her weekly claims. Throughout that time, Ms. Horton was

still dealing with a hand injury that prevented her from being able to return to work with GrapeTree Medical Staff but which did not prevent her from being able to perform other types of work with reasonable accommodation. However, from the time Ms. Horton established her claim for benefits through the benefit week that ended July 18, 2020, Ms. Horton was dealing with a high-risk, complicated pregnancy that prompted her doctor to recommend that she remain off work. In July 2020, Ms. Horton had to face an additional health obstacle, when she became ill with COVID-19. Ms. Horton is not eligible for regular benefits for the period of April 26, 2020 through July 18, 2020.

This matter will be remanded to the Benefits Bureau for entry of a decision concerning Ms. Horton's separation from the GrapeTree employment and for determination of whether she earned 10 times her weekly benefit amount from new employment subsequent to her separation from GrapeTree and prior to establishing the claim for benefits that was effective April 26, 2020.

DECISION:

The July 15, 2020, reference 01, decision is affirmed in so far as it determined that the claimant was not able to work and not available for work due to illness during the period of April 26, 2020 through July 18, 2020. The claimant is not eligible for benefits for that period.

This matter is remanded to the Benefits Bureau for entry of a decision concerning the claimant's separation from the GrapeTree employment and for determination of whether she earned 10 times her weekly benefit amount from new employment subsequent to her separation from GrapeTree and prior to establishing the claim for benefits that was effective April 26, 2020.



James E. Timberland
Administrative Law Judge

October 15, 2020
Decision Dated and Mailed

jet/scn

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.**