

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DEBORAH S BRABY
Claimant

APPEAL NO. 20A-UI-14512-ED

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEYS MARKETING COMPANY
Employer

OC: 07/19/20
Claimant: Appellant (2)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.19(38) – Temporary and Partial Unemployment
IAC R. 871-24.23(26)
Iowa Code Section 96.7(2)a(2)

STATEMENT OF THE CASE:

Deborah Braby filed a timely appeal from the October 26, 2020, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on January 12, 2021. Claimant participated personally. Brenda Hernandez participated on behalf of the employer, Casey's Marketing Company. 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 two-week period of August 1, 2020 through August 15, 2020?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was hired in September 2018 as a cashier. Claimant works at the North Main Store in Osceola, Iowa. Claimant's immediate supervisor is Brenda Hernandez. Claimant typically works 35-37 hours per week.

Claimant went on vacation to visit her daughter in Tennessee on July 19, 2020 through July 31, 2020 in the midst of the COVID-19 pandemic. Casey's Marketing Company instructed claimant that she need to stay home to quarantine when she returned from her vacation. Claimant did not know that she would be required to quarantine by Employer after visiting Tennessee prior to leaving on vacation. Prior to Claimant's vacation, the employer had initiated periodic discussions with staff regarding COVID-19 safety protocol, but had had not implemented a travel policy. While Claimant was on vacation, the employer implemented a policy that required employees who traveled to certain out-of-state locations including Tennessee to quarantine for 14 days upon their return home prior to returning to the employment. Claimant's supervisor notified claimant of the policy while claimant was still on vacation.

Based on the 14-day quarantine requirement, the employer did not allow claimant to return until August 16, 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. 871-24.22(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(29) provides:

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

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

Iowa Code section 96.19(38) provides:

"Total and partial unemployment".

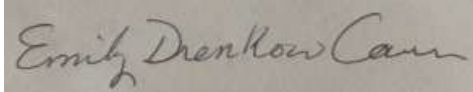
- a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.
- b. An individual shall be deemed partially unemployed in any week in which either of the following apply:
 - (1) While 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.

If a claimant individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. Iowa Code section 96.7(2)(a)(2)(a).

The evidence in the record establishes that claimant was able to work and available for work during the two-week period of August 1, 2020 through August 15, 2020. Claimant is eligible for benefits for the two week period of August 1, 2020 through August 15, 2020 provided she meets all other eligibility requirements. The employer's account may be charged for the benefits paid to claimant for the two week period as well. Claimant's decision to go on an out-of-state vacation during the pandemic demonstrates questionable judgment and measure of disregard for the employer's immune-compromised clients, but does not disqualify her for unemployment insurance benefits.

DECISION:

The October 26, 2020, reference 01, decision is reversed. The claimant was able and available for work during the two-week period of August 1, 2020 through August 15, 2020. The claimant was partially unemployed during the week August 1, 2020 through August 15, 2020 and is eligible for benefits for that week, provided she meets all other eligibility requirements.

A rectangular box containing a handwritten signature in cursive script that reads "Emily Drenkow Carr".

Emily Drenkow Carr
Administrative Law Judge

February 10, 2021
Decision Dated and Mailed

ed/kmj