

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**ASHLEY A KUBBY**  
Claimant

**H.O.P.E. (HONORING OPPORTUNITIES**  
Employer

**APPEAL 20A-UI-09173-AD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/29/20**  
**Claimant: Appellant (4)**

Iowa Code section 96.4(3) – Eligibility – Able to and Available for Work  
Iowa Admin. Code r. 871-24.23(10) – Voluntary Leave of Absence

**STATEMENT OF THE CASE:**

On July 30, 2020, Ashley Kubby (claimant/appellant) filed an appeal from the July 28, 2020 (reference 04) unemployment insurance decision that denied benefits as of March 29, 2020 based on a finding claimant requested and was granted a leave of absence.

A hearing was initially set for September 18, 2020 at 1:30 p.m. Claimant registered a number and was available to participate. However, it was determined at the time of hearing that the issues noticed were incorrect. Because the issues noticed were incorrect and employer did not register a number at which it could be reached to participate, notice of the correct issues could not be waived. A new hearing was set at that time to allow for proper notice of the correct issues.

A telephone hearing was held on October 2, 2020. The parties were properly notified of the hearing. The claimant participated personally. Employer/respondent participated by Cofounder Amy Wallman Madden.

Claimant's Exhibits 1 and 2 were admitted. Official notice was taken of the administrative record.

**ISSUES:**

Is the claimant able to and available for work?

Is the claimant on an approved leave of absence?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant's first day of employment was September 27, 2019. Claimant is still employed by employer as a part-time direct support professional. There is no guarantee of a certain number of hours per week in that position. Claimant's immediate supervisor was Jessica Jaspering.

Claimant was ill and unable to work from April 1 to April 15. Claimant was able to and available for work from April 15 to May 28. However, there was no work available for claimant until May 28. At that time, Jaspering contacted claimant about picking up some hours. Claimant expressed interest in doing so but did not hear back from Jaspering until June 16. Claimant returned to work on June 23. She was then off work from August 25 through October 1 due to medical issues. Claimant was able to and available for work after that date.

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

For the reasons that follow, the July 28, 2020 (reference 04) unemployment insurance decision that denied benefits as of March 29, 2020 is MODIFIED in favor of appellant. Claimant is able to and available for work as set forth below.

#### **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. 871-24.23(35) provides:

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

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

To be able to work, "[a]n 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." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871-24.22(1). "An evaluation of an individual's ability to work for the purposes of determining that individual's eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides." *Sierra* at 723. The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that "[i]nsofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

Claimant is eligible for benefits from the benefit week ending April 25, 2020 and continuing through the benefit week ending August 22, 2020. Claimant was able to and available for work during that time, even when no work was available. Claimant is not eligible for benefits for the benefit weeks ending April 4, 11, and 18, as she was ill the majority of those weeks and therefore not able to and available for work. Claimant is not eligible for the benefit weeks ending August 29, 2020 and continuing through the benefit week ending October 3, 2020, as she was unable to or unavailable for work due to medical issues. Claimant was again able to and available for work from the benefit week ending October 10, 2020.

**DECISION:**

The July 28, 2020 (reference 04) unemployment insurance decision that denied benefits as of March 29, 2020 is MODIFIED in favor of appellant. Claimant is able to and available for work as set forth above.



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Andrew B. Duffelmeyer  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515) 478-3528

October 9, 2020

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Decision Dated and Mailed

abd/sam

***Note to Claimant:***

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible 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.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.