

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHERYL M MARTIE
Claimant

KWIK TRIP INC
Employer

APPEAL 20A-UI-04985-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/22/20
Claimant: Appellant (1R)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(10) – Able & Available – Leave of Absence
Iowa Code § 96.3(7) – Overpayment of Benefits
Public Law 116-136, § 2104(b) – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

On May 31, 2020, Cheryl M. Martie (claimant) filed an appeal from the May 28, 2020, reference 01, unemployment insurance decision that denied regular unemployment benefits based upon the determination she is not able to or available for work effective March 22, 2020. After due notice was issued, a telephone hearing was held on June 24, 2020. The claimant participated personally. The employer participated through Ashley Angell, Assistant Store Leader. Both parties offered exhibits into the record, but they were not admitted into the record, as the other party had not received the proposed exhibits prior to the hearing. Additionally, the parties agreed on the relevant facts and the exhibits would have been duplicative.

ISSUES:

Is the claimant able to and available for work effective March 22, 2020?
Has the claimant been overpaid regular unemployment benefits and Federal Pandemic Unemployment Compensation (FPUC)?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds the parties agree on the relevant facts of the case. The claimant began working for the employer on July 22, 2015 as a Guest Service Co-Worker B Retail. Ashley Angell, Assistant Store Leader, was her last supervisor. The claimant's last day worked was March 14, 2020.

On March 19, the claimant requested a leave of absence from the employer. She and her doctor determined she was high risk for COVID-19 and should not work with the public. The employer granted an indefinite leave of absence. The claimant applied for unemployment insurance benefits effective March 22. She received \$1,152.00 in regular unemployment benefits and \$4,800.00 in FPUC from March 22 through May 23.

On June 3, the claimant submitted documentation to the employer that her leave would end on July 13. On June 17, the claimant submitted her resignation effective July 1. The Benefits Bureau has not yet investigated or adjudicated whether the claimant's separation qualifies her for benefits.

REASONING AND CONCLUSIONS OF LAW:

- 1. Is the claimant able to work, available for work, and actively and earnestly seeking work effective March 22, 2020?*

For the reasons that follow, the administrative law judge concludes that the claimant is not able to and available for work effective March 22 as required by Iowa 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, in relevant part:

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.

...

- (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.

...

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

Iowa Admin. Code r. 871-24.23 provides, in relevant part:

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

...

(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.

...

(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.

An individual claiming benefits has the burden of proof that they are able to and available for work. The claimant is currently not able to and not available for work because her doctor has restricted her from working the public due to her high risk for contracting COVID-19. Accordingly, she is not eligible for regular unemployment insurance benefits.

As she is not eligible for regular unemployment benefits, the claimant may still be eligible for the federal Pandemic Unemployment Assistance (PUA), which requires a claimant to be able to and available for work but for one of the COVID-19 reasons. Additional information about PUA is provided in the "note to claimant" following the date of the decision.

II. Has the claimant been overpaid regular unemployment benefits and Federal Pandemic Unemployment Compensation (FPUC)?

For the reasons that follow, the administrative law judge concludes the claimant has been overpaid regular unemployment benefits and FPUC.

Iowa Code § 96.3(7) provides, in pertinent part:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

PL116-136, Sec. 2104 provides, in relevant part:

EMERGENCY INCREASE IN UNEMPLOYMENT COMPENSATION BENEFITS.

...

(b) Provisions of Agreement

(1) Federal pandemic unemployment compensation.--Any agreement under this section shall provide that the State agency of the State will make payments of regular compensation to individuals in amounts and to the extent that they would be determined if the State law of the State were applied, with respect to any week for which the individual is (disregarding this section) otherwise entitled under the State law to receive regular compensation, as if such State law had been modified in a manner such that the amount of regular compensation (including dependents' allowances) payable for any week shall be equal to

(A) the amount determined under the State law (before the application of this paragraph), plus

(B) an additional amount of \$600 (in this section referred to as "Federal Pandemic Unemployment Compensation").

....

(f) Fraud and Overpayments

...

(2) Repayment.--In the case of individuals who have received amounts of Federal Pandemic Unemployment Compensation to which they were not entitled, the State shall require such individuals to repay the amounts of such Federal Pandemic Unemployment Compensation to the State agency...

Since the claimant is not eligible for regular unemployment benefits effective March 22, she was overpaid \$1,152.00 in regular unemployment benefits and \$4,800.00 in FPUC from March 22 through May 23. The claimant will be required to repay the benefits received unless this decision is overturned or she is eligible for PUA.

DECISION:

The May 28, 2020, reference 01, unemployment insurance decision is affirmed. The claimant is not able to and available for work effective March 22, 2020. Benefits are denied. As a result, the claimant has been overpaid \$1,152.00 in regular unemployment benefits and \$4,800.00 in FPUC.

REMAND:

The issue of whether the claimant's separation qualifies her for regular unemployment benefits is remanded to the Benefits Bureau for an initial investigation and determination if necessary.



Stephanie R. Callahan
Administrative Law Judge

July 7, 2020
Decision Dated and Mailed

src/scn

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>.