

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SERENA S COLE
Claimant

**SEQUEL YOUTH SERVICES OF
WOODWARD**
Employer

APPEAL 20A-UI-13979-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 07/26/20
Claimant: Appellant (1)**

Iowa Code § 96.19(38) – Total and Partial Unemployment
Iowa Admin. Code r. 871-24.23(26) – Same Hours and Wages
Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

Serena S Cole, the claimant/appellant, filed an appeal from the November 2, 2020, (reference 05) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on January 5, 2021. Ms. Cole participated and testified. The employer did not participate. Claimant's Exhibits B and C were admitted into evidence.

ISSUES:

Is Ms. Cole totally, partially, or temporarily unemployed and able to and available for work?
Is Ms. Cole still employed at the same wage and hours?
Is Ms. Cole able to and available for work?
Is the employer's account subject to charge?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Cole began working for the employer on February 4, 2020. She worked as a full-time youth counselor. She worked 40 hours per week but her schedule varied and she was paid \$14.00 per hour.

On, or about, July 17, Ms. Cole's new supervisor, Ms. Hollinder, put out a new work schedule and asked all of the employees who reported to her about their availability. Ms. Cole responded with her availability and Ms. Hollinder responded that she would "go back and fix [the schedule]" and that Ms. Hollinder had "just go[ne] off of what [Ms. Cole] worked before." Claimant's Exhibit C. After Ms. Hollinder revised the schedule, Ms. Cole was still scheduled for 40 hours but they were hours Ms. Cole couldn't work.

On, or about, July 22, Ms. Cole told Ms. Hollinder that she had a high temperature and that she wasn't feeling well. Ms. Cole did not tell Ms. Hollinder that her symptoms were due to Ms. Cole

having menstrual cramps. Ms. Hollinder told Ms. Cole that she could not be at work because the symptoms she described are symptoms of COVID-19 and that Ms. Cole would have to get a COVID-19 test in order to return to work. Ms. Hollinder removed Ms. Cole from the schedule for two weeks with a scheduled return date of August 5.

Toward the end of the two week period, Marsha Dodge from the employer's human resources department called Ms. Cole and asked if she had taken a COVID-19 test. Ms. Cole told Ms. Dodge that she had not and would not be taking a COVID-19 test because she didn't have COVID-19 symptoms and because she had gone to her doctor who cleared her to return to work a few days after August 5. Ms. Cole and Ms. Dodge agreed that Ms. Cole would return to work a few days after August 5 with a doctor's note and that Ms. Cole would inform Ms. Hollinder and Mr. Ruiz, Ms. Hollinder's boss, of her new scheduled return date.

Ms. Cole told Ms. Hollinder and Mr. Ruiz her new scheduled return date. They both replied that Ms. Cole was needed at work before her new scheduled return date. Ms. Cole was not available to return to work until her new scheduled return date. Ms. Cole spoke with Ms. Dodge again to let her know about Ms. Cole's conversations with Ms. Hollinder and Mr. Ruiz. Ms. Dodge deferred to Ms. Hollinder and Mr. Ruiz and told Ms. Cole that she would need to come back to work when her supervisors needed her to return to work. Ms. Cole did not return to work on August 5. In mid-August, Ms. Cole sent the employer an email informing them that she quit effective immediately.

The administrative record shows that the Benefits Bureau of Iowa Workforce Development investigated and made a determination on the issue of Ms. Cole's separation from employment. The January 12, 2021, (reference 01) unemployment insurance decision denied Ms. Cole benefits due to her voluntarily quitting without good cause attributable to the employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that Ms. Cole was not able to and available for work from July 26, 2020 through August 22, 2020 and this employer's account shall be charged.

Iowa Code § 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 Code § 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.

Iowa Admin. Code r. 871-24.23(1), (26) and (35) provide:

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.

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

(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.

Iowa Code section 96.7(2)a(2)(a) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the 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. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

Ms. Cole was not able to and available for work from July 26 through August 22. From July 26 through approximately August 8, Ms. Cole was either ill or under the care of her doctor. After August 8 until her voluntary quit in mid-August, Ms. Cole made herself unavailable by not showing up to work. During this time period, the employer did not offer Ms. Cole the same hours and wages. Benefits are denied. Charges shall be made to the employer's account.

DECISION:

The November 2, 2020, (reference 05) unemployment insurance decision is affirmed. Benefits are denied. Charges shall be made to the employer's account.



Daniel Zeno
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January 29, 2021
Decision Dated and Mailed

dz/scn