

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AMBER S MULINIX
Claimant

THOMAS L CARDELLA & ASSOCIATES INC
Employer

APPEAL 20A-UI-03945-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Appellant (3R)

Iowa Code § 96.4(3) – Able and Available
Iowa Admin. Code r. 871-24.2(1)e – Failure to Report as Directed

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the May 1, 2020 (reference 02) unemployment insurance decision that found claimant was not eligible for unemployment benefits effective April 26, 2020 because she failed to report as directed. The parties were properly notified of the hearing. A telephone hearing was held on May 29, 2020. The claimant, Amber S. Mulnix, participated personally. The employer, Thomas L. Cardella & Associates Inc., did not participate. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUES:

Is the claimant able to and available for work?
Did the claimant fail to report as directed?

FINDINGS OF FACT:

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

Claimant is employed for this employer but became ill on or about March 15, 2020. She has had a cough and fever for several days. She continues to have a cough but the fever has since subsided. She has been out of work due to her personal illness since March 15, 2020. Claimant also does not have daycare due to the COVID 19 pandemic. Claimant has requested and been granted a leave of absence from her employer. The only fact-finding interview held by Iowa Workforce Development was on April 28, 2020 and the claimant did participate in that interview.

Claimant's administrative records establish that she has received unemployment insurance benefits and Federal Pandemic Unemployment Compensation (FPUC) benefits since filing her unemployment insurance claim effective March 15, 2020. The issue of whether the claimant has been overpaid benefits and FPUC benefits due to her inability and unavailability to work has yet to be determined by the Benefits Bureau of Iowa Workforce Development.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not able to and available for work effective March 15, 2020. Benefits are denied effective March 15, 2020.

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 § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(1) 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.

b. Interpretation of ability to work. The law provides that an individual must be able to work to be eligible for benefits. This means that the individual must be physically able to work, not necessarily in the individual's customary occupation, but able to work in some reasonably suitable, comparable, gainful, full-time endeavor, other than self-employment, which is generally available in the labor market in which the individual resides.

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.

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)).

In this case, the claimant has been unable to work since March 15, 2020 due to her personal illness and lack of childcare. As such, she is not able to and available for work. Claimant did participate in the fact-finding interview held by Iowa Workforce Development so she is not disqualified for any failure to report as directed. Benefits are denied effective March 15, 2020 due to her being unable to work due to illness and lack of childcare.

While the claimant may not be eligible for regular State of Iowa unemployment insurance benefits, she may be eligible for unemployment insurance benefits that have been made available to claimants under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"). The Pandemic Unemployment Assistance ("PUA") section of the Cares Act discusses eligibility for claimants who are unemployed due to the Coronavirus. For claimants who are ineligible for regular unemployment insurance benefits under Iowa Code Chapter 96, they may be eligible under PUA.

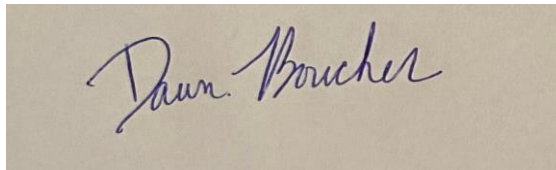
Note to Claimant: If this decision determines you are not eligible for regular unemployment insurance benefits and you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for 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>.**

DECISION:

The May 1, 2020 (reference 02) unemployment insurance decision is modified in favor of the respondent. The claimant is not able to work or available for work effective March 15, 2020.

REMAND:

The issue of whether the claimant has been overpaid unemployment insurance benefits and Federal Pandemic Unemployment Compensation shall be remanded to the Benefits Bureau for an initial investigation and determination.

A handwritten signature in blue ink that reads "Dawn Boucher". The signature is written in a cursive style on a light-colored, textured background.

Dawn Boucher
Administrative Law Judge

June 11, 2020
Decision Dated and Mailed

db/sam