

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**AZEB NEGA**  
Claimant

**THE UNIVERSITY OF IOWA**  
Employer

**APPEAL 18A-UI-11509-NM-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/28/18  
Claimant: Appellant (2)**

Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.23(10) – Availability Disqualifications – Leave of Absence

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the November 19, 2018, (reference 01) unemployment insurance decision that denied benefits based upon a determination that she was on a voluntary leave of absence. The parties were properly notified about the hearing. A telephone hearing was held on December 12, 2018. Claimant participated and testified with the assistance of an Amharic interpreter from CTS Language Link. Claimant was represented in the hearing by attorney Lorraine Gaynor. Employer participated through Senior Human Resource Director David Bergeon, Leave and Disability Administrator Rebecca Marsengill, and Benefits Specialist Mary Eggenburg. Joanne Higgins was also present on behalf of the employer, but did not testify. Claimant's Exhibit A was admitted into evidence.

**ISSUES:**

Is the claimant able to work and available for work effective October 28, 2018?  
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 began working for employer on July 7, 2014. Claimant last worked as a full-time custodian. Claimant was placed on a leave of absence on September 19, 2018 due to an allergic reaction she had to bleach.

During the first year of claimant's employment she did not experience any significant issues with the cleaning chemicals she used while at work. After a year or so, claimant began cleaning rooms that required the use of bleach. Claimant found she was having severe allergic reactions whenever coming into contact with bleach while at work. Specifically, she would have difficulty breathing, got severe headaches, and experienced itching around her eyes. Claimant notified her immediate supervisor of this reaction and was given work where she did not have to come into contact with bleach. This arrangement worked fine for claimant until she got a new supervisor.

Claimant's new supervisor assigned her to do work where she was required to use bleach. Claimant again began having severe allergic reactions to the bleach. This was reported to claimant's supervisor and she was sent to the doctor. Claimant's doctor confirmed she had a bleach allergy and released her to return to work, but directed her to avoid coming into contact with bleach. The employer attempted to accommodate claimant's allergy by providing her with a mask. Claimant tried the mask, but still experienced the same allergic reaction.

On October 15, the employer suggested using a full face mask instead or enrolling in the disability program. Claimant explained to the employer that she could not use the full face mask because it made her feel like she could not breathe and sent her into a panic attack. Claimant insisted she did not need the disability program, if the employer could accommodate her in the same manner as her prior supervisor. The employer instructed claimant to obtain a note from her doctor confirming her panic attacks. Unfortunately, by this time claimant had been off work long enough that the employer had cancelled her insurance. Claimant contacted her doctor to see what the out of pocket expense would be for her to come in for an exam regarding the panic attacks. Claimant was told the cost would be more than \$400.00, which she could not afford. Claimant then applied for Medicaid assistance, but was only recently approved. The claimant has an appointment with her doctor the afternoon of December 12, 2018. The employer testified if the doctor confirms claimant is not able to wear a full face mask, it will not be able to accommodate her in her current position.

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

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work effective October 28, 2018.

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 provides:

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.

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 was placed on leave by the employer on September 19, 2018 after she had continued allergic reactions to bleach. Both parties agree the leave was at the employer's insistence, rather than the claimant's request, as it did not have an accommodation for her bleach allergy immediately available. Claimant's allergic reactions were directly caused by the chemicals she was required to use while at work and therefore is work-related. Inasmuch as the allergy is considered work-related for the purposes of unemployment insurance benefits only and the treating physician has released the claimant to return to work, even with restriction of not working around bleach the claimant has established her ability to work. Even if the medical condition was not work-related, in as much as the employer allowed claimant to work in light duty assignments for a period of time, but now does not have light duty work available, claimant has established her ability to and availability for work. Because the employer had no work available or was not willing to accommodate the work restrictions, benefits are allowed.

**DECISION:**

The November 19, 2018, (reference 01) unemployment insurance decision is reversed. The claimant is able to work and available for work effective October 28, 2018. Benefits are allowed, provided she is otherwise eligible.

---

Nicole Merrill  
Administrative Law Judge

---

Decision Dated and Mailed

nm/rvs