

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CINDY L NISSER
Claimant

CATHOLIC HEALTH INITIATIVES - IOWA
Employer

APPEAL 21A-UI-15924-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/18/21
Claimant: Appellant (4)**

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

STATEMENT OF THE CASE:

Cindy L Nisser, the claimant/appellant, filed an appeal from the July 15, 2021, (reference 01) unemployment insurance decision that denied benefits as April 18, 2021. The parties were properly notified about the hearing. A telephone hearing was held on September 28, 2021. Ms. Nisser participated and testified. The employer did not register for the hearing and did not participate. The administrative law judge took official notice of the administrative record.

ISSUE:

Is Ms. Nisser able to and available for work?
Is Ms. Nisser on a leave of absence?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Ms. Nisser began working for the employer on 2011. She worked as full-time certified nursing assistant (CNA).

In December 2020, Ms. Nisser went on medical leave because she is diagnosed with underlying health conditions that make her high risk for complications if she tested positive for COVID-19. Ms. Nisser was scheduled to return to work in January 2021. However, she was not able to return to work because her back went out and her doctor advised her not to work. Ms. Nisser took Family Medical Leave Act (FMLA) leave beginning in January 2021. Ms. Nisser's FMLA leave ended on April 4, 2021. Ms. Nisser's doctor released her to return to work on May 25, 2021, and Ms. Nisser returned to work for the employer, albeit in a new position, on June 1, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Ms. Nisser is available for work from April 18, 2021 through May 24, 2021, and she is available for work as of May 25, 2021.

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. 871-24.23(10) 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. A person claiming benefits has the burden of proof that she is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

In this case, Ms. Nisser is not available for work from April 18, 2021 through May 24, 2021 because her doctor has not yet released her to return to work. Ms. Nisser is available for work as of May 25, 2021 when her doctor released her to return to work. Benefits are allowed as of May 25, 2021, provided Ms. Nisser is otherwise eligible.

DECISION:

The July 15, 2021, (reference 01) unemployment insurance decision is modified in favor of the appellant, Ms. Nisser. Ms. Nisser is not available for work from April 18, 2021 through May 24, 2021. Benefits are denied during this time period. Ms. Nisser is available for work as of May 25 2021. Benefits are allowed as of May 25, 2021 provided she is otherwise eligible.



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September 29, 2021
Decision Dated and Mailed

dz/scn