

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JACKIE K AKERS
Claimant

RIVERSIDE COMMUNITY SCHOOL DIST
Employer

APPEAL NO. 21A-UI-07022-B2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/24/20
Claimant: Appellant (1)

Iowa Code § 96.4-3 – Able and Available
Iowa Code § 96.4-5 – Reasonable Assurance

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated March 4, 2021 reference 01, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on May 18, 2021. Claimant participated personally. Employer failed to respond to the hearing notice and did not participate.

ISSUES:

Whether claimant is able and available for work?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant works as a para educator for employer and has for approximately 10 years. In May of 2020 claimant came down with Covid. She was not teaching at the time, but still was being paid by the school district. The school year ran until early June 2020.

Claimant received reasonable assurance from employer that she would be rehired for the 2020-2021 school year.

Claimant's Covid illness lasted until early August 2020.

Claimant stated that she was to begin working for the school district over the summer, but was unable to do so because of her illness. Claimant provided no documentation supporting this statement. Claimant additionally stated that she used to work over the summer, but took three years off to care for her own children. Claimant was planning on resuming the work for the school district, but was unable to do so when she had her Covid struggles.

Claimant provided no medical reports concerning her illness, nor was there a contract supplied supporting claimant's contention that she was to go back to work over the summer.

REASONING AND CONCLUSIONS OF 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:

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(35) provides:

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

(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 96.4(5)b provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

5. Benefits based on service in employment in a nonprofit organization or government entity, defined in section 96.19, subsection 18, are payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the same basis of other service subject to this chapter, except that:

b. Benefits based on service in any other capacity for an educational institution including service in or provided to or on behalf of an educational institution while in the employ of an educational service agency, a government entity, or a nonprofit organization, shall not be paid to an individual for any week of unemployment which begins during the period between two successive academic years or terms, if the individual performs the services in the first of such academic years or terms and has reasonable assurance that the individual will perform services for the second of such academic years or terms. If benefits are denied to an individual for any week as a result of this paragraph and the individual is not offered an opportunity to perform the services for an educational institution for the second of such academic years or terms, the individual is entitled to retroactive payments of benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of this paragraph.

Iowa Admin. Code r. 871-24.51(6) provides:

School definitions.

(6) Reasonable assurance, as applicable to an employee of an educational institution, means a written, verbal, or implied agreement that the employee will perform services in the same or similar capacity, which is not substantially less in economic terms and conditions, during the ensuing academic year or term. It need not be a formal written contract. To constitute a reasonable assurance of reemployment for the ensuing academic year or term, an individual must be notified of such reemployment.

Claimant in this matter had a reasonable assurance for continued employment through the school district, As this is the case, claimant was not eligible to receive regular unemployment benefits. Claimant's illness is also not covered by regular unemployment benefits. AS claimant was not able and available for work during the period from May 24-August 10, 2020 she is not eligible to receive state benefits for that period.

DECISION:

The decision of the representative dated March 4, 2021, reference 01 is affirmed. Claimant is not eligible to receive unemployment insurance benefits, effective May 24, 2020 as she was not able and available for work throughout the time she filed for benefits and she was reasonably assured of a job the next school year.



Blair A. Bennett
Administrative Law Judge

May 25, 2021
Decision Dated and Mailed

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