

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AMANDA L CURRENT
Claimant

FAMILY DOLLAR SERVICES INC
Employer

APPEAL 21A-UI-04752-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/08/20
Claimant: Appellant (2)**

Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

Claimant filed an appeal from the January 29, 2021 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on May 4, 2021, at 10:00 a.m. Claimant participated. Employer did not participate. Claimant's Exhibit A was admitted.

ISSUE:

Whether claimant is able to and available for work.

FINDINGS OF FACT:

As claimant was the only witness, the administrative law judge makes the following findings of fact based solely upon claimant's testimony: Claimant is employed as a part-time Repack Order Filler for Family Dollar Services. On November 9, 2020, claimant was tested for Covid-19 due to potential exposure. The rapid test results were negative. Family Dollar Services instructed claimant that she could not return to work without a doctor's note. Claimant was unable to obtain one that would release her to return to work immediately, because the test result could be a false negative. Claimant returned to work November 23, 2020. Claimant performed no work for employer between November 9, 2020 and November 22, 2020. Claimant was not ill during this period of time and would have worked if the employer allowed her. Claimant filed an initial claim for unemployment insurance benefits effective November 8, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was able to and available for work. Benefits are allowed provided claimant is otherwise eligible.

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), (2) provide, in pertinent part:

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.

(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.

An individual 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.

Claimant was not ill from November 8, 2020 until November 21, 2020. Claimant was able to perform her work for employer. Employer would not allow claimant to work due to its Covid -19 protocol. Claimant has met her burden of proving she was able to and available for work. Benefits are allowed provided claimant is otherwise eligible.

DECISION:

The January 29, 2021 (reference 01) unemployment insurance decision is reversed. Claimant was able to work and available for work from November 8, 2020 until November 21, 2020. Benefits are allowed, provided claimant is otherwise eligible and subject to reporting earnings during those benefit weeks.



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May 13, 2021
Decision Dated and Mailed

acw/ol