

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOAN L CONRAD
Claimant

APPEAL 20A-UI-11571-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 04/26/20
Claimant: Appellant (4)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions
Iowa Admin. Code r. 871-24.23(10) – Able & Available – Leave of Absence

STATEMENT OF THE CASE:

On September 18, 2020, Joan L. Conrad (claimant) filed an appeal from the September 15, 2020, reference 01, unemployment insurance decision that denied benefits effective April 26, 2020, based upon the determination she was not able to or available for work. After due notice was issued, a telephone conference hearing was held on October 26, 2020. The claimant participated personally.

ISSUE:

Was the claimant able to and available for work during the week ending May 2, 2020?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began working for DSW Shoe Warehouse, Inc. on August 5, 2019, as a part-time Sales Associate. She began an approved leave of absence on or about December 30, due to personal health issues.

The claimant filed her claim for unemployment insurance benefits effective April 26, 2020. She was released to return to work by her doctor on Thursday, April 30, and when she contacted the employer, they did not have work available. Iowa Workforce Development (agency) issued an unemployment insurance decision dated September 15, 2020, reference 02, that found the claimant was eligible for benefits effective May 3, due to a short-term layoff. The employer did not appeal that decision and it has become final agency action.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not able to and available for work during the week ending May 2. Benefits are denied.

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 provides, in relevant 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.

...

h. Available for part of week. Each case must be decided on its own merits. Generally, if the individual is available for the major portion of the workweek, the individual is considered to be available for work.

...

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

Iowa Admin. Code r. 871-24.23 provides, in relevant part:

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.

...

(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.

An individual claiming benefits has the burden to prove that she is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. During the week ending May 2, the claimant was not released by her doctor to return to work until Thursday, April 30. Therefore, she was not available for work the majority of the workweek, and she cannot establish that she was genuinely attached to the labor market. Benefits are denied for the week ending May 2, 2020.

DECISION:

The September 15, 2020, reference 01, unemployment insurance decision is modified in favor of the appellant. The claimant was not able to work and available for work during the week ending May 2, 2020. Benefits are denied.

Consistent with the agency decision issued on September 15, 2020, reference 02, the claimant is eligible for benefits effective May 3, 2020.



Stephanie R. Callahan
Administrative Law Judge

October 28, 2020
Decision Dated and Mailed

src/sam

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits for the week ending May 2, 2020. If 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>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.