

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MARY LAMOUREUX
Claimant

HOPE HAVEN INC
Employer

APPEAL 21A-UI-10280-SN-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/24/21
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant, Mary Lamoureux, filed an appeal from the March 23, 2021, (reference 01) unemployment insurance decision that denied benefits based upon not being able to and available for work for the January 24, 2021. After due notice was issued, a telephone conference hearing was scheduled to be held on June 25, 2021. The claimant participated. The employer, Hope Haven, participated through Community Living Manager Caitlin Blied, Community Living Manager Amy Van Roekel, and Human Resource Manager Ashley Vande Vegte. Exhibit A was received into the record. The administrative law judge took official notice of the agency records.

ISSUE:

Was the claimant able to work and available for work effective January 24, 2021?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant started working as a full-time director support professional for the employer on September 15, 2017. The claimant's rate of pay was \$13.61. The claimant worked a varying schedule.

On June 8, 2020, Ms. Van Roekel had a meeting with the claimant about whether she could continue to perform the essential functions of her position. Ms. Van Roekel had heard from staff and clients that the claimant could not perform cardiopulmonary resuscitation and had difficulty walking up and down stairs.

On June 11, 2020, the claimant underwent a physical fitness test to determine if she could perform the essential functions of her position. Registered Nurse Julie Schroeder determined the claimant could not perform the essential functions of her position on that date.

On June 19, 2020, the employer placed the claimant on Family Medical Leave Act leave until July 23, 2020. The employer told the claimant that she would need to obtain a release to return to work without restriction to return.

On June 24, 2020, the claimant did not obtain a release to return to work. The employer issued the claimant additional leave to obtain a release to return to work.

On August 26, 2020, the employer sent the claimant a letter informing her that her leave would exhaust on September 7, 2020.

On September 8, 2020, the claimant did not obtain a release to return to work without restriction.

On September 9, 2020, the employer changed the claimant's job classification to on-call status for six months.

On March 3, 2021, the employer sent the claimant a letter informing her that her employment would end on March 9, 2021, if she did not obtain a release to return to work prior to that date.

The claimant provided a doctor's note written by Dr. Kelly S. Pomeranke stating the claimant was not able to return to work by March 9, 2021. The doctor's note is dated March 31, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not able to work and available for work effective January 24, 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. 871-24.22(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. 871-24.22(2) provides:

Benefit 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.

(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.

Iowa Admin. Code r. 871-24.23 provides:

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.

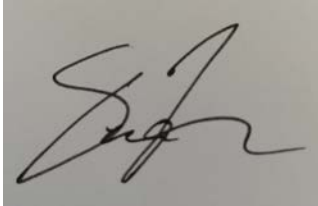
An individual claiming benefits has the burden of proof that she is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

The claimant had been determined as not able to perform the essential functions of her position in June 11, 2020. The claimant has not provided a release from a medical provider rebutting this

assessment regarding her ability to work. In fact, the claimant's doctor agreed with this assessment on March 31, 2021. As a result, the claimant is disqualified under Iowa Admin. Code r. 871-24.23 (35).

DECISION:

The March 23, 2021, (reference 01) unemployment insurance decision is affirmed. The claimant was not able to work and available for work effective January 24, 2021. Benefits are denied.

A rectangular box containing a handwritten signature in black ink. The signature is cursive and appears to read "Sean M. Nelson".

Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

June 29, 2021
Decision Dated and Mailed

smn/scn