

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JENNIFER L GULLETT**  
Claimant

**KENDRAN LC**  
Employer

**APPEAL 19A-UI-07871-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/07/18  
Claimant: Appellant (2)**

Iowa Code § 96.4-3 – Able and Available  
871 IAC 24.23(10) – Voluntary Leave of Absence

**STATEMENT OF THE CASE:**

Jennifer Gullett (claimant) appealed a representative's October 4, 2019, decision (reference 02) that concluded she was not eligible to receive unemployment insurance benefits as of September 8, 2019, because she requested a leave of absence from Kendran (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 29, 2019. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing.

The claimant offered and Exhibits A and B were received into evidence. The administrative law judge took official notice of the administrative file.

**ISSUE:**

The issue is whether the claimant is available for work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked for the employer from March 7, 2019, to the present. On August 22, 2019, the claimant fainted at work and was taken by ambulance to the hospital emergency room.

On Thursday, August 22, 2019, the doctor wrote the claimant a note releasing her to return to work without restrictions on Monday, August 26, 2019. The claimant was in telephone contact with the employer's director. The claimant said she would return to work on August 26, 2019. The director told the claimant she could not return to work and she should take time off. The employer would not place the claimant on the schedule, even though the claimant was released to return to work without restrictions.

Two weeks later on September 7, 2019, the director sent the claimant an e-mail stating the owner agreed with director that the claimant should take approximately thirty days off work. The

claimant could file for unemployment insurance benefits and the employer would not fight the benefits. The employer wanted the claimant to provide them with a doctor's note when they rescheduled her for work. The claimant filed an additional claim for unemployment insurance benefits on September 8, 2019.

The claimant had a medical appointment again on September 17, 2019, in anticipation of her return to work. The note stated the claimant could return to work without restrictions on September 18, 2019. The claimant provided both notes to the employer on September 18, 2019, and returned to work.

### **REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge concludes the claimant is eligible to receive unemployment insurance benefits.

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.

When an employee requests and is granted a leave of absence, she is considered to be voluntarily unemployed. The claimant did not request a leave of absence. The employer stopped scheduling the claimant for work. The claimant was not voluntarily unemployed.

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). There was no evidence that there were any restriction or limitation on employability. Accordingly, benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The representative's October 4, 2019, decision (reference 02) is reversed. The claimant is able and available for work as of September 8, 2019, provided she meets all other eligibility requirements.

---

Beth A. Scheetz  
Administrative Law Judge

---

Decision Dated and Mailed

bas/scn