

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

VIRGINIA KENNEBECK
Claimant

PELLA CORPORATION
Employer

APPEAL 21A-UI-07950-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/26/20
Claimant: Appellant (2)

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:

On March 19, 2021, Virginia Kennebeck (claimant) filed an appeal from the March 15, 2021, reference 01, unemployment insurance decision that denied benefits effective January 3, 2021, based upon the determination she was ill and not able to and available for work. After due notice was issued, a telephone hearing was held on May 5, 2021. The claimant participated. Pella Corporation (employer) did not respond to the hearing notice and did not participate. No exhibits were offered into the record.

ISSUES:

Was the claimant able to work, available for work, and actively and earnestly seeking work the week ending January 9, 2021?
Was the claimant totally, partially, or temporarily unemployed?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant has worked for the employer since March 3, 1997. On or about January 3, 2021, she notified the employer that she had been exposed to someone who had tested positive for COVID-19, per the employer's policy. The claimant did not have any symptoms and was not sick. The employer advised her to remain home, and asked her to be tested for COVID-19 toward the end of the week. The claimant was tested on Thursday and learned she tested negative on Friday. The claimant was allowed to return to work on Monday, January 11.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was temporarily unemployed and considered able to and available for work for the week ending January 9, 2021. Benefits are allowed.

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 ... 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". [Emphasis added.]

Iowa Code section 96.19(38)c provides:

Definitions.

38. Total and partial unemployment

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

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.

...

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.

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. The claimant was not sick and did not request a leave of absence. The employer did not have work for the claimant due to a national health emergency and the lack of work lasted for one week. She was temporarily unemployed and considered able to and available for work. Benefits are allowed for the week ending January 9, 2021.

DECISION:

The March 15, 2021, reference 01, unemployment insurance decision is reversed. The claimant was temporarily unemployed and considered able to and available for work effective January 3, 2021. Benefits are allowed for the week ending January 9, 2021.



Stephanie R. Callahan
Administrative Law Judge

May 13, 2021
Decision Dated and Mailed

src/kmj