

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

WHITNEY N BRAMMER
Claimant

CARE INITIATIVES
Employer

APPEAL 23A-UI-08785-DZ-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 08/06/23
Claimant: Appellant (4R)

Iowa Code § 96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

Whitney N. Brammer, the claimant/appellant,¹ appealed the Iowa Workforce Development (IWD) September 5, 2023 (reference 01) unemployment insurance (UI) decision. IWD denied Ms. Brammer REGULAR (state) UI benefits as of August 6, 2023 because IWD concluded she requested and the employer granted her a leave of absence so she was not available for work. On September 15, 2023, the Iowa Department of Inspections, Appeals and Licensing (DIAL), UI Appeals Bureau mailed a notice of hearing to Ms. Brammer and the employer for a telephone hearing scheduled for September 29, 2023.

The undersigned administrative law judge held a telephone hearing on September 29, 2023. Ms. Brammer participated in the hearing personally. Matthew Brammer, Ms. Brammer's husband, participated in the hearing personally. The employer participated through Kathleen Lewis, administrator, and Connie Hickerson, Equifax hearing representative. The undersigned took official notice of the administrative record and admitted Claimant's Exhibits A-B as evidence.

ISSUES:

Is Ms. Brammer able to and available for work as of August 6, 2023?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the undersigned finds: Ms. Brammer began working for the employer in June 2018. She worked as a full-time assistant dietary manager/cook.

Ms. Brammer was injured in February 2023 shoveling snow from her car in the employer parking lot after her shift had ended. Ms. Brammer last attended work on February 19. Ms. Brammer filed a worker's compensation (comp) claim. On March 14, the worker's comp doctor concluded that Ms. Brammer's injury was not work related.

Soon thereafter, Ms. Brammer then applied for Family Medical Leave Act (FMLA) leave and the employer approved her for said leave for twelve weeks. Ms. Brammer used all of her FMLA

¹ Claimant is the person who applied for UI benefits. Appellant is the person or employer who appealed.

leave as of June 4. On June 2, Ms. Brammer's doctor sent the employer a fax telling the employer that Ms. Brammer was not released to return to work for another month. The employer put Ms. Brammer on temporary hold, which meant she was still employed, and she had to work at least eight hours during the following ninety days. Ms. Brammer's doctor had not yet released her to return to work.

On July 5, Ms. Brammer contacted the employer via phone and told the employer that her doctor had released her to return to work with the restrictions that she does not bend or lift more than twenty pounds. At this time, Ms. Brammer did not give the employer any documents showing her doctor had released her to return to work with restrictions. Ms. Brammer's job required her to both bend and lift more than twenty pounds. The employer told Ms. Brammer that she could not return to work yet. The employer sent Ms. Brammer's doctor a description of her job. Over the next month or so, Ms. Brammer, Ms. Brammer's doctor and the employer attempted to gather paperwork related to Ms. Brammer's work restrictions.

Ms. Brammer filed her initial UI claim effective August 6 because the employer would not let her return to work with her work restrictions. On August 23, Ms. Brammer gave the employer a doctor's note releasing her to return to work with the restrictions that she does not bend or lift more than twenty pounds.² The employer had work available for Ms. Brammer if she did not have work restrictions.

On September 13, the employer told Ms. Brammer that the employer could not accommodate her work restrictions and terminated her employment. IWD has not yet investigated or issued a decision on Ms. Brammer's eligibility for UI benefits based on how her job ended with this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the undersigned concludes Ms. Brammer is not able to and available for work from August 6, 2023 through August 19, 2023 and she is able to and available for work from August 20, 2023 through September 9, 2023.

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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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) and (2) provide:

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

² Claimant's Exhibit B.

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.

b. Interpretation of ability to work. The law provides that an individual must be able to work to be eligible for benefits. This means that the individual must be physically able to work, not necessarily in the individual's customary occupation, but able to work in some reasonably suitable, comparable, gainful, full-time endeavor, other than self-employment, which is generally available in the labor market in which the individual resides.

(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(35) provide:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(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.

To be able to work, "[a]n 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."³ "An evaluation of an individual's ability to work for the purposes of determining that individual's eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides."⁴ A person claiming benefits has the burden of proof that she is be able to work, available for work, and earnestly and actively seeking work.⁵

³ *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871-24.22(1).

⁴ *Sierra* at 723.

⁵ Iowa Admin. Code r. 871-24.22.

In this case, Ms. Brammer has not established that she was able to and available for work from August 6, 2023, the effective date of UI claim through August 22, 2023. During that time, Ms. Brammer provided no proof to the employer that her doctor had released her to return to work. Ms. Brammer has established that she is able to and available for work as of August 23, 2023, when she gave the employer her doctor's note. Even though Ms. Brammer's doctor advised that she follow the work restrictions, Ms. Brammer could still physically work in some reasonably suitable, comparable, gainful, full-time endeavor. Ms. Brammer is eligible for UI benefits beginning the week of August 20-26, 2023 through the week of September 4-9, 2023.

The issue of Ms. Brammer's eligibility for UI benefits based on how her job ended with this employer should be remanded (sent back) to the IWD Benefits Bureau for investigation and a decision.

DECISION:

The September 5, 2023 (reference 01) UI decision is MODIFIED IN FAVOR OF THE APPELLANT, MS. BRAMMER. Ms. Brammer is not able to and available for work from August 6, 2023 through August 19, 2023. Ms. Brammer is able to and available for work beginning the week of August 20-26, 2023 through the week of September 4-9, 2023.

REMAND:

The issue of Ms. Brammer's eligibility for UI benefits based on how her job ended with this employer on September 13, 2023 is REMANDED (sent back) to the IWD Benefits Bureau for investigation and a decision.



Daniel Zeno
Administrative Law Judge

October 3, 2023
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.