

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NICOLE K DAVIES
Claimant

**HEARTLAND EMPLOYMENT SERVICES
LLC**
Employer

APPEAL 21A-UI-17130-CS-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/09/21
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Admin. Code r. 871-24.23(10) – Leave of Absence

STATEMENT OF THE CASE:

On August 6, 2021, the claimant/appellant filed an appeal from the July 30, 2021, (reference 01) unemployment insurance decision that disallowed benefits based on the claimant requesting and being granted a leave of absence. The parties were properly notified about the hearing. A telephone hearing was held on September 24, 2021. Claimant participated at the hearing. Employer participated through Human Resource Director, Nicole Melchert. Sammarra Smith was present as a witness but was not called to testify.

ISSUES:

Is the claimant able to work and available for work effective May 9, 2021?
Is the claimant voluntarily unemployed due to a requested leave of absence?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on October 19, 2020. Claimant last worked as a full-time Nurse's Aide. Claimant last worked for the employer on April 5, 2021. Claimant began having health issues and went on an approved FMLA leave. Claimant's FMLA leave has expired but the employer has agreed to allow claimant to take a personal leave from work. Claimant has been put on a doctor's restriction from working. Claimant is still employed with the employer.

Claimant has a follow up appointment with her doctor on September 28, 2021. Claimant will find out if she is cleared to return to work or if she has to go in for surgery.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code § 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 § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 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.

(emphasis added).

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." *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). "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." *Sierra* at 723.

Iowa Admin. Code r. 24.22(2) provides:

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.

(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.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

(emphasis added).

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.

Iowa Admin. Code r. 871-24.23(6) provides:

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

(6) If an individual has a medical report on file submitted by a physician, stating such individual is not presently able to work.

The burden is on the claimant to establish that she is able and available for work within the meaning of the statute. Iowa Code § 96.6(2); Iowa Admin. Code r. 871-24.22. Claimant has a medical condition and the treating physician has not released the claimant to return to work without restriction. Additionally claimant has been on FMLA leave and personal leave since April 19, 2021. These two facts disqualify claimant from benefits because she is unavailable for work according to the law. As a result, benefits are denied. Since claimant did not file a claim until May 9, 2021, the denial is effective May 9, 2021.

DECISION:

The July 30, 2021, (reference 01) unemployment insurance decision is affirmed. Benefits are denied effective May 9, 2021, and continuing until the claimant establishes that she is able to and available for full-time work.



Carly Smith
Administrative Law Judge
Unemployment Insurance Appeals Bureau

September 29, 2021
Decision Dated and Mailed

cs/mh

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. 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.