

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**SHERRY A MAAS**  
Claimant

**BODINE ELECTRIC COMPANY**  
Employer

**APPEAL 21A-UI-19313-DZ-T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 07/04/21**  
**Claimant: Appellant (2R)**

---

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:**

Sherry A Maas, the claimant/appellant, filed an appeal from the August 26, 2021, (reference 01) unemployment insurance decision that denied benefits as July 4, 2021. The parties were properly notified about the hearing. A telephone hearing was held on October 21, 2021. Ms. Maas participated and testified. The employer participated through Becky Brown, human resources manager. The administrative law judge took official notice of the administrative record.

**ISSUE:**

Is Ms. Maas able to and available for work?  
Is Ms. Maas on a leave of absence?

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: Ms. Maas began working for the employer on June 2, 2008. She worked as full-time utility clerk. Her employment ended on July 7, 2021.

Ms. Maas was on intermittent Family Medical Leave Act (FMLA) leave for about 3 years. She usually used FMLA leave at least one day per week, sometimes more. Ms. Maas's schedule was Monday through Fridays, 10 hours each day, overtime on Fridays for 10 hours per day and overtime on Saturdays for six hours per day. Ms. Maas took FMLA leave because she was not able to work all of the hours the employer schedule her for due to her health conditions. On the days she took FMLA leave, Ms. Mass would call in and then complete FMLA paperwork when she returned to work.

Ms. Maas worked two hours on June 28, 2021 and four hours on June 29. Ms. Maas did not attend work any other days that week. By that point, Ms. Maas had run out of FMLA leave and she had use all of her vacation leave. Ms. Maas accrued attendance points for each day she was absent.

On Saturday July 3, Ms. Brown spoke with Ms. Maas on the telephone about her attendance that week. Ms. Maas stated that she was sick but she did not have a doctor's note. The employer was closed on Monday, July 5 for a holiday. Ms. Maas worked on July 6. That day, Ms. Brown told Ms. Maas that she had accrued too many attendance points, and that her employment would likely be terminated. On July 7, Ms. Brown called Ms. Brown and told her that her employment was terminated because she had accrued too many points since she was absent without any protected leave. Ms. Maas then filed her initial claim for benefits and her claim was made effective Sunday, July 4, 2021.

The issue of Ms. Maas' separation from employment has not been investigated by the Benefits Bureau of Iowa Workforce Development.

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

For the reasons that follow, the administrative law judge concludes Ms. Mass is not on a leave of absence as July 4, 2021, and she is able to and available for work. .

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(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.

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

In this case, Ms. Maas was not on a leave of absence. By July 4, 2021, Ms. Maas's FMLA leave was over and Ms. Maas worked, as scheduled, on July 6, 2021. Ms. Maas continues to be able to work, but not as many hours the employer wanted her to work. Ms. Maas is able to and available for work as of July 4, 2021. Ms. Maas is able to work in some gainful employment, which is engaged in by others as a means of livelihood. Since Ms. Maas is able to and available for work, benefits are allowed, provided she is otherwise eligible.

#### **DECISION:**

The August 26, 2021, (reference 01) unemployment insurance decision is reversed. Ms. Maas is available for work as of July 4, 2021. Benefits are allowed, provided she is otherwise eligible.

**REMAND:**

The issue of Ms. Maas' separation from employment is remanded (sent back) to the Benefits Bureau of Iowa Workforce Development for investigation and a decision.



---

Daniel Zeno  
Administrative Law Judge  
Iowa Workforce Development  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax 515-478-3528

November 02, 2021  
Decision Dated and Mailed

dz/ol