

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NIAHL KAY
Claimant

COUNCIL BLUFFS PAYROLL COMPANY
Employer

APPEAL 21A-UI-24228-ED-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 09/12/21
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 26, 2021 (reference 03) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on January 18, 2022. The claimant, Niah Kay participated personally. The employer, Council Bluffs Payroll Company did not participate. Claimant's exhibits 1-4 were admitted into the record.

ISSUES:

Was the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant has been employed by the employer full time since September 1, 2020. Plaintiff's last day worked was August 16, 2021 after which he went out on a medical leave of absence. Claimant had surgery on August 17, 2021. Claimant attempted to return to work multiple times, each time being unable to return while having an additional two surgeries after the first one. Ultimately claimant was released to full duty without restrictions on December 29, 2021 while the employer was on shut down. Claimant attempted to return to work on January 5, 2022, and the employer denied his return saying he had been out too long.

REASONING AND CONCLUSIONS OF LAW:

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

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(2)j(1), (2) 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.

(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.

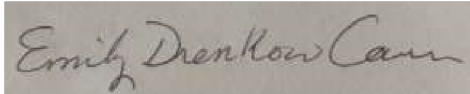
(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(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.

Claimant was not able to and available for work from August 17, 2021 through January 4, 2022 when he attempted to return to work. Claimant was out on a leave of absence which is a voluntary period of unemployment during which he is not eligible for benefits. Claimant attempted to return to work on January 5, 2022 after being released to return without restriction, at which time the employer told him he had been out too long and failed to reemploy claimant. Effective January 5, 2022 claimant is considered laid off and eligible for benefits.

DECISION:

The October 26, 2021 (reference 03) unemployment insurance decision reversed. The claimant is ineligible for benefits from August 17, 2021 through January 4, 2022.

A rectangular box containing a handwritten signature in cursive script that reads "Emily Drenkow Carr".

Emily Drenkow Carr
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

March 3, 2022
Decision Dated and Mailed

ed/kmj