

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**KRISTA D ARMOUR**  
Claimant

**AJS OF DES MOINES INC**  
Employer

**APPEAL 20A-UI-09533-SC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/22/20**  
**Claimant: Appellant (1)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions  
Iowa Admin. Code r. 871-24.23(10) – Able & Available – Leave of Absence

**STATEMENT OF THE CASE:**

On August 11, 2020, Krista D. Armour (claimant) filed an appeal from the August 7, 2020, reference 01, unemployment insurance decision that denied benefits effective March 22, 2020, based upon the determination she was on an approved leave of absence from AJs of Des Moines, Inc. (employer) and was not able to and available for work. After due notice was issued, a telephone hearing was held on September 25, 2020. The claimant participated personally. The employer participated through Vivone Abdel-Rezeq, HR Coordinator, and Scott Schwiesow, Director of Regional Operations. The Claimant's Exhibit A was admitted into the record. The administrative law judge took official notice of the administrative record, specifically the claimant's claim history.

**ISSUE:**

Was the claimant able to and available for work effective March 22, 2020?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began working for the employer on February 22, 2019, as a full-time Office Manager. The week of March 22, 2020, Scott Schwiesow, Director of Regional Operations, contacted the claimant and offered her a leave of absence beginning March 29 because she was at the end of her pregnancy and considered high-risk for COVID-19. The claimant accepted the offered leave and the employer paid her normal wages through the week ending April 11.

The claimant's baby was born on April 11. The claimant's doctor released her back to work on June 8 with no restrictions. (Exhibit A). The claimant returned to work but elected to work from home due to her children and the risk of COVID-19. The claimant did not have enough work to do full-time at home and worked reduced hours from June 14 through July 11. If she had gone into the office, she would have had enough work for forty hours a week.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not able to and available for work effective March 22, 2020. Benefits are denied.

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 Code section 96.19(38) provides:

Definitions.

38. Total and partial unemployment

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

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.

...

c. Intermittent employment. An individual cannot restrict employability to only temporary or intermittent work until recalled by a regular employer.

...

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.

...

l. Available for work. To be considered available for work, an individual must at all times be in a position to accept suitable employment during periods when the work is normally performed.

m. Restrictions and reasonable expectation of securing employment. An individual may not be eligible for benefits if the individual has imposed restrictions which leave the individual no reasonable expectation of securing employment. Restrictions may relate to the type of work, hours, wages, location of work, etc. or may be physical restrictions.

Iowa Admin. Code r. 871-24.23 provides, in relevant part:

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.

...

(8) Where availability for work is unduly limited because of not having made adequate arrangements for child care.

...

(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.

...

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

...

(18) Where the claimant's availability for work is unduly limited because such claimant is willing to work only in a specific area although suitable work is available in other areas where the claimant is expected to be available for work.

...

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

...

(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.

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 on an approved leave of absence effective March 22. She was released to return to work by her doctor effective June 8. Once she returned, the claimant elected to work from home, which limited her hours, and enough work to fill her regular hours was available at another work location. Accordingly, she is not eligible for regular unemployment insurance benefits.

**DECISION:**

The August 7, 2020, reference 01, unemployment insurance decision is affirmed. The claimant was not able to and available for work effective March 22, 2020. Benefits are denied.



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Stephanie R. Callahan  
Administrative Law Judge

September 29, 2020  
Decision Dated and Mailed

src/sam

*Note to Claimant:* This decision determines you are not eligible for regular unemployment insurance benefits. 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. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.