

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**MURIAH L HUTCHINSON**  
Claimant

**HY-VEE INC**  
Employer

**APPEAL NO. 21A-UI-00166-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/20/20**  
**Claimant: Appellant (1)**

Iowa Code Section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

The claimant, Muriah Hutchinson, filed a timely appeal from the November 24, 2020, reference 01, decision that denied benefits effective September 20, 2020, based on the deputy's conclusion that the claimant requested and was granted a leave of absence, that the claimant was voluntarily unemployed, and that the claimant was not available for work. After due notice was issued, a hearing was held on February 3, 2021. The claimant participated and presented additional testimony through Lashae Eldridge. Barbara Buss of Corporate Cost Control represented the employer and presented testimony through Sheena Murray. Exhibit A was received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO and DBRO.

**ISSUE:**

Whether the claimant was able to work and available for work for the period beginning September 20, 2020.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was most recently employed as a part-time night stock clerk at Hy-Vee and most recently performed work for Hy-Vee on August 7, 2020. Since that time, the claimant has been on a medical leave of absence due to back issues that include bulging discs and arthritis. In August 2020, the claimant's doctor took the claimant off work. The claimant has continued under the care of a doctor and has consulted with a neurologist. The claimant's health care providers have determined that surgical intervention will not help and have instead focused on pain management. The claimant's underwent steroid injections that did not bring relief. The claimant is reluctant to take pain medication. Effective January 12, 2020, the claimant's doctor released the claimant to return to work with a 20 lb. lifting restriction. The claimant has not provided the release to the employer has not contacted the employer to discuss returning to work. The claimant has diagnosed mental health issues that have factored in her decision not to initiate contact with Hy-Vee, though she has enjoyed a positive, supportive relationship with the employer. The employer has continued to have work available to the claimant and expresses a willingness to accommodate the claimant's 20-pound lifting restriction. The

claimant applied for one or two jobs at a time when she was not released to work and has not otherwise engaged in meaningful or active search for new employment.

**REASONING AND CONCLUSIONS OF LAW:**

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) 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.

Iowa Admin. Code r. 871-24.23(1), (10) and (35) provides:

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

(1) An individual who is ill and presently not able to perform work due to illness.

...

(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.

...

(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.

If a claimant individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. Iowa Code section 96.7(2)(a)(2)(a).

The claimant has not met the able and available requirements since she established the claim that was effective September 20, 2020. Since that time, the claimant has been on a medical leave of absence and under the care of a doctor. Prior to January 12, 2020, the claimant was ill and not released to any extent to return to work. Effective January 12, 2020, the claimant was released to return to work with a 20-pound lifting restriction. The claimant has since that time elected not to initiate contact with the employer about returning to the employment and has not otherwise engaged in an active or earnest search for new employment. The employer has continued to have the same work available for the claimant, is willing to provide reasonable accommodations, and will not be charged for benefits for the period of September 20, 2020 through the benefit week that ended January 23, 2021.

**DECISION:**

The November 24, 2020, reference 01, decision is affirmed. The claimant has not met the able and available requirements since September 20 2020 and is therefore not eligible for benefits for the period beginning September 20, 2020. The employer's account will not be charged for benefits for the period of September 20, 2020 through the benefit week that ended January 23, 2021.



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James E. Timberland  
Administrative Law Judge

February 17, 2021  
Decision Dated and Mailed

jet/scn