

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHRISTINA M KUTSCH
Claimant

SEDONA STAFFING INC.
Employer

APPEAL 21A-UI-17201-AD-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 01/17/21
Claimant: Appellant (3)

Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search

STATEMENT OF THE CASE:

On August 5, 2021, Christina Kutsch (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated August 2, 2021 (reference 05) that denied benefits as of May 30, 2021, based on a finding claimant was still employed in the same capacity in an on-call job.

A telephone hearing was held on September 29, 2021. The parties were properly notified of the hearing. Claimant participated personally. Sedona Staffing Inc. (employer/respondent) participated by UI Administrator Colleen McGuinty. Official notice was taken of the administrative record.

ISSUE(S):

- I. Is 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:

Employer is a staffing agency. Claimant's first assignment there was on December 17, 2018. Claimant has been on multiple assignment since then. A long-term assignment ended on January 13, 2021. There were further assignments available after that time which claimant declined for personal reasons, including health issues. Claimant next worked brief assignments on April 9, April 18, and July 14 and 15, 2021. Claimant acknowledges she was too ill to work for much of May and June 2021. Claimant remains attached to employer.

Claimant filed a claim for benefits each week from the benefit week ending January 23, 2021 through the benefit week ending August 28, 2021. Each week claimant filed a claim for benefits she indicated she was able and available for work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the decision dated August 2, 2021 (reference 05) that denied benefits as of May 30, 2021, based on a finding claimant was still employed in the same capacity in an on-call job is MODIFIED in favor of respondent.

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".

The administrative law judge finds claimant has not established her ability and availability for work during the weeks filed. She declined work for personal and health reasons on several occasions and acknowledges she was too ill to work for a substantial period of time. However, she continued to indicate when she filed a claim for benefits each week during that period that she was able and available for work when she clearly was not. This in turn strongly calls into question whether claimant was able and available for work during any of the period in question. It is claimant's burden to establish she is able and available for work during each week filed and she has not met that burden. Benefits are therefore denied from the effective date of the claim, January 1, 2021, and continuing until claimant has established she is able and available for work.

DECISION:

The decision dated August 2, 2021 (reference 05) that denied benefits as of May 30, 2021, based on a finding claimant was still employed in the same capacity in an on-call job is MODIFIED in favor of respondent. Claimant is ineligible for benefits during each week filed in the current claim year due to being unable and/or unavailable for work during those weeks.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

October 01, 2021
Decision Dated and Mailed

abd/ol

Note to Claimant:

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are 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.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.