

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LORI SCHULZ
Claimant

SERVICEMASTER SEVEN HILLS JANITOR
Employer

APPEAL 21A-UI-23715-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/28/21
Claimant: Respondent (4)

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

STATEMENT OF THE CASE:

The employer/appellant filed an appeal from the October 13, 2021 (reference 03) unemployment insurance decision that found claimant was eligible for unemployment benefits effective June 20, 2021 due to a layoff from work. The parties were properly notified of the hearing. A telephone hearing was held on December 15, 2021. The claimant participated personally. The employer participated through witness Jayne Banfield. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUE:

Was the claimant able to and available for work effective March 28, 2021?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began her employment with this employer in June of 2016. She worked part-time as a janitorial staff member. In March of 2020, the claimant took a leave of absence from work due to her underlying medical conditions and the COVID-19 pandemic. Claimant returned to her regular part-time position with this employer on June 20, 2021. She continues to work her regular part-time schedule to date. There was continuing work available to the claimant from March of 2020 through June 20, 2021 if the claimant would have been able to work and available for work. Claimant was not laid off due to lack of work. Claimant never permanently separated from employment with this employer.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 96.4(3) provides:

Required Findings.

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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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) 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.

b. Interpretation of ability to work. The law provides that an individual must be able to work to be eligible for benefits. This means that the individual must be physically able to work, not necessarily in the individual's customary occupation, but able to work in some reasonably suitable, comparable, gainful, full-time endeavor, other than self-employment, which is generally available in the labor market in which the individual resides.

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(10) provides:

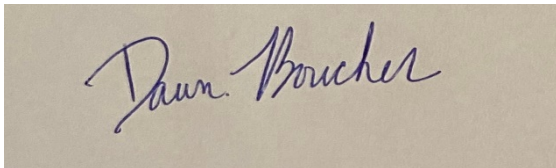
Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(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.

Because the claimant was on a medical leave of absence from work, she was not able to and available for work pursuant to Iowa law. As such, regular unemployment insurance benefits funded by the State of Iowa are denied effective her original claim date of March 28, 2021 and continuing until she establishes that she was able to and available for work.

DECISION:

The October 13, 2021 (reference 03) unemployment insurance decision is modified in favor of the appellant. The claimant was not laid off due to lack of work. No permanent separation from employment occurred. The claimant was not able to work or available for work effective March 28, 2021 due to her voluntary leave of absence from work. Unemployment insurance benefits funded by the State of Iowa are denied effective March 28, 2021 and continuing until the claimant establishes that she is able to and available for work.

A rectangular area containing a handwritten signature in blue ink that reads "Dawn Boucher".

Dawn Boucher
Administrative Law Judge

December 27, 2021
Decision Dated and Mailed

db/db