

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DEANNA M DOUVIA
Claimant

**BODEANS BAKING HOLDING COMPANY
LLC**
Employer

APPEAL NO. 21A-UI-03385-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/10/20
Claimant: Appellant (1)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 14, 2021, reference 02, decision that denied benefits for the period beginning September 20, 2020, based on the deputy's conclusion that that claimant was unable to work due to illness. After due notice was issued, a hearing was held on March 25, 2021. Claimant, Deanna Douvia, participated. Ambra Schleis represented the employer. Exhibits 1 and A were received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX and WAGE-A.

ISSUES:

Whether the claimant was able to work and available for work for the period of September 20, 2020 through October 3, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant is employed by BoDeans Baking Holding Company, L.L.C. as a full-time accounting administrator. She usually worked 7:00 a.m. to 4:00 p.m. Monday through Friday. The claimant's hourly wage has at all relevant times has been \$24.05.

On the morning of Friday, September 18, 2020, the claimant awoke in an ill state. The claimant had a fever and cough. The employer's COVID-19 protocol required that the clamant give notice to the employer if she experienced symptoms indicating illness. The claimant notified her supervisor and the human resources manager that she was ill with a fever and cough. The claimant was not well enough to work. The employer requested that the clamant contact her doctor. The clamant contacted her doctor. The claimant and her doctor decided to have the claimant submit to COVID-19 testing. The claimant provided the employer with an update regarding her doctor's recommendation that she be tested for COVID-19 and her plan to be tested. Pursuant to the employer's COVID-19 protocol, the employer told the claimant she would need to remain off work until she received her COVID-19 test result. The claimant submitted to COVID-19 testing that same day.

On Sunday, September 20, 2020, the claimant notified the employer that she had received her COVID-19 test result and that the test was positive for COVID-19. The claimant told the employer that she was not feeling well. The employer told the claimant that she would need to remain off work 14 days, measured from the September 18, 2020 onset of symptoms. This meant the claimant would not be allowed to return to work until Monday, October 5, 2020.

The claimant provided the employer a screenshot of her positive COVID-19 test result. In the notice of the positive result, the test provider had recommended that the claimant stay home to recover from her illness, not leave home except to get medical care, and that the claimant avoid public locations. The screen shot did not include a recommended duration for quarantine.

On Tuesday, September 22, 2020, the employer called to check in with the claimant. The claimant said things were not going well. The claimant was still too sick to work.

On Friday, September 25, 2020, the employer called to check in with the claimant. The claimant mentioned that she was feeling a bit better, but was still not well. The claimant continued to be too sick to work.

On Monday September 28, 2020, the employer checked in with the claimant. The claimant stated that she was starting to feel better. The claimant was still too sick to work.

On Friday morning, October 2, 2020, the claimant contacted the employer, stated she was feeling better, and asked whether she could come to work that day and work over the weekend. The employer advised the claimant that she would need to stay off work until Monday, October 5, 2020 pursuant to CDC guidelines and in light of the fact that her symptoms had just recently subsided.

The employer required that the clamant use 40 hours of accrued sick leave to cover the first week of her absence. The employer was not participating in the Families First Coronavirus Response Act (FFCRA) and did not provide any other compensation to the claimant for the period the clamant was off work.

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) 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.

The weight of the evidence establishes that the claimant was ill and neither able to work nor available for work within the meaning of the law during the two weeks between September 20, 2020 and October 3, 2020. The claimant is not eligible for regular benefits for that two-week period.

DECISION:

The January 14, 2021, reference 02, decision is affirmed. The claimant was neither able to work nor available for work within the meaning of the law during the two weeks between September 20, 2020 and October 3, 2020. The claimant is not eligible for regular benefits for that two-week period.



James E. Timberland
Administrative Law Judge

April 12, 2021
Decision Dated and Mailed

jet/ol

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. 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.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>.