

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SHANTINA M TATE
Claimant

KWIK TRIP INC
Employer

APPEAL 22A-UI-00333-AR-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 10/17/21
Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871—24.23(10) – Voluntary Leave of Absence

STATEMENT OF THE CASE:

The claimant, Shantina M. Tate, filed an appeal from the November 22, 2021, (reference 01) unemployment insurance decision that denied benefits based upon the determination that claimant was on an approved leave of absence effective October 17, 2021. The parties were properly notified of the hearing. A telephone hearing was held on January 25, 2022. The claimant participated personally. The employer participated through Kathy Laumer. The administrative law judge took official notice of the administrative record.

ISSUES:

Effective October 17, 2021, was the claimant able to and available for work?
Effective October 17, 2021, was the claimant on a voluntary leave of absence?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began employment with this employer on September 17, 2019. She remains employed as an assistant food service leader as of the date of her unemployment appeal hearing. In that role, she works full time.

On October 17, 2021, claimant took her grandson to work. The following day, his mother informed claimant that the grandson tested positive for COVID-19. Claimant called the employer to inform it of her exposure, as she was directed by the employer. Under the employer's policy, claimant was required to be off work for at least five days, and then had to seek a COVID-19 test on the sixth day after exposure.

Claimant did not wait until October 23, 2021, to take the test. Her healthcare provider administered a test on October 19, 2021, which returned a negative result. Claimant provided the results of this test to the employer and requested to come back to work. The employer refused, saying that she needed another test on the sixth day after exposure under its policy. Claimant did not want to submit to another test, because they are unpleasant, but sought one from her healthcare provider, nonetheless. The healthcare provider refused to administer

another test for claimant after the negative result from October 19, 2021. The employer's policy dictated that if no negative test could be attained according to the timeline laid out by the policy, then employees must be out of work for 10 days. Claimant returned to work on October 28, 2021, after the 10 days had elapsed. She was not paid by the employer during her time off work. Claimant never developed symptoms of COVID-19.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was not able to and available for work. Benefits are withheld.

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—24.23(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.

Here, claimant was required to be off work due to COVID-19 exposure. However, this renders claimant unavailable for work, because she was prevented from working due to exposure to COVID-19. Accordingly, benefits must be denied.

DECISION:

The November 22, 2021 (reference 01), unemployment insurance decision is affirmed. Claimant is not able to or available for work effective October 17, 2021. Benefits are denied.



Alexis D. Rowe
Administrative Law Judge

February 14, 2022
Decision Dated and Mailed

ar/mh