

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOY M BUSS
Claimant

ABCM CORPORATION
Employer

APPEAL 20A-UI-15465-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/02/20
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

On November 9, 2020, the claimant filed an appeal from the November 4, 2020 (reference 01) unemployment insurance decision that denied benefits to the claimant based on a leave of absence. The parties were properly notified about the hearing. A telephone hearing was held on January 25, 2021. Claimant participated personally. The employer, ABCM Corporation, participated through witnesses Marilyn Moser and Linsey Henry. Employer's Exhibit 1 was admitted. The administrative law judge took official notice of the claimant's unemployment insurance benefits records. The hearing was consolidated with Appeal No. 20A-UI-15466-DB-T.

ISSUES:

Was the claimant able to and available for work?
Was the claimant on an approved leave of absence?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began her employment on February 7, 1994. She worked full-time as a certified nursing assistant at the employer's nursing home. Her duties included caring for residents. Her last day physically worked on the job was July 19, 2020. Claimant was on vacation in Texas until August 1, 2020. Upon her return, she was required to quarantine due to the COVID 19 pandemic and she used her vacation leave to do so from August 3, 2020 through August 15, 2020. She earned vacation pay above her established weekly benefit amount, plus fifteen dollars for the week-ending August 8, 2020 and the week-ending August 15, 2020 but she did not report the earnings when she filed her weekly-continued claims for benefits.

On or about August 3, 2020, the claimant asked to be changed from full-time status to on call status with a start date of August 15, 2020. See Exhibit 1. As an on call worker, she was not guaranteed a certain number of working hours per week. She was never called in to work when her status changed to on call. On or about October 1, 2020, Ms. Moser sent the claimant, and several other workers, a text message reminding them to complete their required educational

credits so that they would not be written up. See Exhibit 1. Upon receipt of the text message, the claimant texted Ms. Moser back telling her to "save your write up" and voluntarily quit her employment with the employer. See Exhibit 1. Continued work was available if the claimant had not quit.

Claimant alleged that she was not working because she was refused to be given an N95 mask to work in by the employer. Prior to the claimant leaving for vacation in July of 2020 she was asked if she wanted to be fitted for an N95 mask to work in. The claimant told her supervisor, Linsey Henry, that she did not want to be fitted for an N95 mask. The employer had a policy in place that if a client was using a nebulizer, only a worker fitted with an N95 mask would be required to enter the room to assist the client. Therefore, claimant's exposure to COVID 19 would be limited if she was not wearing an N95 masks. Other COVID 19 policies were put into place by the employer which included but was not limited to two temperature checks of employees each shift; gowns, masks, and requiring workers to shower in and out of the COVID 19 unit.

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", subparagraph (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:

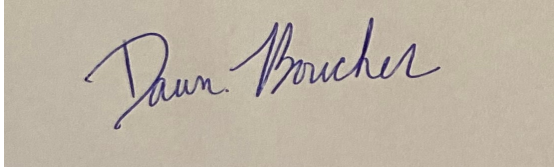
Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(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.

In this case, the claimant requested and was granted a leave of absence from August 2, 2020 through August 15, 2020. She also earned vacation pay in excess of her weekly benefit amount, plus \$15.00 for each of those two weeks she was on a leave of absence. From August 15, 2020 through September 30, 2020, the claimant put herself on an on call status and hours were not guaranteed to her. As such, the period of time she is not working is deemed to be a period of voluntary unemployment. Claimant has not established that she was able to and available for work. Therefore, claimant is not eligible for regular, state-funded unemployment insurance benefits effective August 2, 2020.

DECISION:

The November 4, 2020 (reference 01) unemployment insurance decision is affirmed. The claimant was on a voluntary leave of absence and was not able to work and available for work effective August 2, 2020. Unemployment insurance benefits funded by the State of Iowa are denied effective August 2, 2020.



Dawn Boucher
Administrative Law Judge

February 10, 2021
Decision Dated and Mailed

db/kmj