

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CASIE R TRIMBLE

Claimant

AEROTEK INC

Employer

APPEAL NO. 19A-UI-08194-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/15/19

Claimant: Appellant (1/R)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Casie Trimble filed a timely appeal from the October 14, 2019, reference 01, decision that denied benefits effective September 15, 2019, based on the deputy's determination that Ms. Trimble was not able to perform work due to illness. After due notice was issued, a hearing was held on November 7, 2019. Ms. Trimble participated. The employer did not comply with the hearing notice instructions to register a telephone number for the hearing and did not participate. The hearing in this matter was consolidated with the hearing in Appeal Number 19A-UI-08195-JTT. The employer failed to comply with the hearing notice instructions to register a telephone number and did not participate. Exhibits A and B were received into evidence. The administrative law judge took official notice of the agency's administrative record of wages reported by or for the claimant and benefits disbursed to the claimant (DBRO).

ISSUES:

Whether the claimant has been able to work and available for work since establishing her claim for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Casie Trimble established an original claim for benefits that was effective September 15, 2019. Iowa Workforce Development set Ms. Trimble's weekly benefit amount at \$351.00. Ms. Trimble's base period wages derive from full-time employment. After Ms. Trimble established her claim for benefits, she made weekly claims for the seven consecutive weeks between September 15, 2019 and November 2, 2019. For each week of the claim, Ms. Trimble reported that she had made two employer contacts, that she was able to work and available for work, and that she had not refused any offers of employment. For the first week of the claim, Ms. Trimble reported that she had been laid off and reported that she had \$462.00 in wages. Ms. Trimble reported zero wages for the second and subsequent weeks of her claim.

Ms. Trimble established her claim for benefits in response to her separation from a full-time, long-term work assignment at TCS and employment with Aerotek, Inc., a temporary employment agency. Ms. Trimble began the clerical assignment at TCS in September 2018

and last performed work in the assignment on September 20, 2019. TCS elected to end the assignment after Ms. Trimble requested to reduce her work schedule from the full-time work schedule of 7:00 a.m. to 3:30 p.m., Monday through Friday, to 22 hours per week. Ms. Trimble's request to reduce her work hours was based on diagnoses of chronic fatigue syndrome (CFS) and fibromyalgia. Ms. Trimble's ongoing, chronic health condition had led to her missing one to six days of work per month. Aerotek and TCS did not raise the illness-based absences as a concern. Only when Ms. Trimble made the specific request to reduce her work hours to 22 per week, did TCS elect not to have her continue in the employment.

At the time Ms. Trimble filed her appeal on October 22, 2019, she stated in her appeal letter that her CFS prevented her from performing full-time employment, but did not prevent her from performing part-time employment with accommodations. Ms. Trimble has not discussed with her doctor what types of work she is able to perform and unable to perform. Despite, Ms. Trimble's statement in the appeal letter, and despite the absence of any medical documentation referencing her ability to work, Ms. Trimble represents that she has primarily sought full-time employment since the second week of her unemployment insurance claim.

Though Ms. Trimble reported as part of her weekly claim for the week that ended September 21, 2019, that she had made two employer contacts, Ms. Trimble did not contact any prospective employers that week. Ms. Trimble was still working full-time for Aerotek/TCS during that week, for which she was paid \$462.00 in wages.

During the week that ended September 28, 2019, Ms. Trimble applied for two full-time clerical jobs.

During the week that ended October 5, 2019, Ms. Trimble applied for a part-time clerical job and for a full-time clerical job.

During the week that ended October 12, 2019, Ms. Trimble applied for two full-time clerical jobs.

During the week that ended October 19, 2019, Ms. Trimble applied for a full-time clerical position and a part-time clinic assistant position.

During the week that ended October 26, 2019, Ms. Trimble applied for at-home transcription positions, but is unable to provide additional detail.

During the week that ended November 2, 2019, Ms. Trimble applied for a full-time clerical position and a full-time at-home typing/data entry position.

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(1)(a) 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.

Iowa Admin. Code r. 871-24.23(23) provides:

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

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

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.

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.

Ms. Trimble did not meet the availability requirement during the week of September 15-21, 2019, due to the number of hours she worked for the employer that week and the fact that her wages exceeded her weekly benefit amount by more than \$15.00. Ms. Trimble is not eligible for benefits for the week that ended September 21, 2019.

Ms. Trimble presented insufficient evidence to prove that she has indeed been able to work full-time and available for full-time work since September 22, 2019 and through the benefit week that ended November 2, 2019. Ms. Trimble specifically stated in her online appeal that she was not able to work full-time due to her chronic health condition. Ms. Trimble presented no medical documentation to support her assertion that she has been able to work full-time. Because Ms. Trimble's base period wage credits are based on a history of full-time employment, Ms. Trimble is required to be able to work full time and available for full-time to be eligible for unemployment insurance benefits. The limitations Ms. Trimble has placed on work search during some of the claim weeks further supports the conclusion that she is not able to work full-time and not available for full-time work. This is reflected in the applications for part-time employment and for the work-at-home jobs. Benefits are denied effective September 15, 2019. The able and available disqualification remained in effect through the benefit week that ended November 2, 2019.

This matter will be remanded to the Benefits Bureau for determination of whether Ms. Trimble has been able to work and available for work during the period beginning November 3, 2019. That determination should include consideration of relevant medical documentation.

DECISION:

The October 14, 2019, reference 01, decision is affirmed. The claimant was not available and/or able to work during the weeks between September 15, 2019 and November 2, 2019 and is not eligible for benefits for those weeks.

This matter is remanded to the Benefits Bureau for determination of whether the claimant has been able to work and available for work during the period beginning November 3, 2019. That determination should include consideration of relevant medical documentation

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/scn