

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DAWN L THOMAS
Claimant

IOWA STATE UNIVERSITY
Employer

APPEAL 22A-UI-05487-ED-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 8/16/20
Claimant: Appellant (1)

Iowa Code § 96.6(2) – Timeliness
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(10) – Able & Available – Availability Disqualifications

STATEMENT OF THE CASE:

On February 28, 2022, the claimant filed an appeal from the February 10, 2021, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on April 12, 2022. Claimant, Dawn Thomas, participated. Employer, Iowa State University, participated through hearing representative Kathleen Travers and witness Najud Malouf. No exhibits were admitted into the record.

ISSUES:

Is the claimant able to and available for work?
Is 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 working for employer on November 4, 2019 as a full time custodian. Claimant's immediate supervisor was Peg Pfirier. Claimant incurred an injury that required treatment outside of work. The injury was incurred on August 16, 2020. The claimant's doctor issued a note recommending claimant stay off of work for 12 weeks for treatment. Claimant was first released to work on after 10 weeks of treatment. Claimant returned to work per her usual schedule at that time. Claimant applied for FMLA leave for this time but was denied because she had not been employed long enough. The employer did agree to an unpaid leave of absence for the 10 weeks claimant was off work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work effective August 16, 2020.

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:

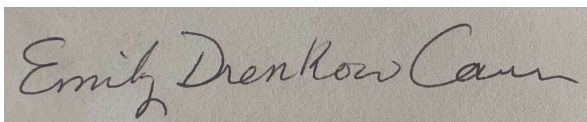
Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(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 on a leave of absence due to an injury to her wrist. Claimant has not established she is able to and available for work, even under the United States Department of Labor's guidance to flexibly interpret this requirement. See Unemployment Insurance Program Letter No. 10-20. Therefore, claimant is not eligible for regular, state-funded unemployment insurance benefits from the effective date of the claim.

DECISION:

The February 10, 2021, (reference 01) insurance decision is affirmed. The claimant is not available for work effective August 16, 2020, and regular, state-funded unemployment insurance benefits are denied.



Emily Drenkow Carr
Administrative Law Judge

April 15, 2022
Decision Dated and Mailed

ed/kmj