

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

GAY REICHEL
Claimant

KWIK TRIP INC
Employer

APPEAL 21A-UI-05673-SN-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/05/20
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the February 16, 2021, (reference 02) unemployment insurance decision that denied benefits effective April 5, 2020. After due notice was issued, a telephone conference hearing was scheduled to be held on April 27, 2021. The claimant participated. The employer participated through Store Leader John Richardson.

ISSUE:

Was the claimant able to work, available for work for the week ending April 5, 2020?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant, Gay Reichel, started working for the employer, Kwik Trip, as a part-time guest service coworker on September 1, 2019. Her rate of pay in April 2020 was \$13.13.

The employer offered its employees the opportunity to take an unpaid leave of absence if they felt uncomfortable working after the onset of the Covid19 pandemic. This leave of absence could be up to eight weeks in duration.

On April 5, 2020, the claimant asked Store Leader Keith Stiles to be placed on a leave of absence. The claimant provided Mr. Stiles with a note that stated the claimant was at greater risk of mortality if she was to become infected by Covid19 for various underlying health conditions. Mr. Stiles granted the claimant's request.

On May 16, 2020, the claimant returned from her leave of absence. The employer would have provided the claimant work if she had not requested a leave of absence.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not able to work and available for work effective April 5, 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 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.

(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.

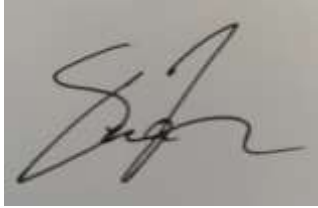
(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

An individual claiming benefits has the burden of proof that she is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

The claimant requested and was granted a leave of absence. The claimant is disqualified from benefits from April 5, 2020 to May 16, 2020 under Iowa Admin. Code r. 871-24.23 (10). Benefits are denied.

DECISION:

The February 16, 2021, (reference 02) unemployment insurance decision is affirmed. The claimant was not able and available for the week ending April 5, 2020. Benefits are denied.



Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

May 03, 2021
Decision Dated and Mailed

smn/ol

Note to Claimant:

This decision determines you are not eligible for regular unemployment insurance benefits. 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. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.