

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SARA K VASKE
Claimant

APPEAL 21A-UI-18073-DZ-T
ADMINISTRATIVE LAW JUDGE
DECISION

IOWA WORKFORCE
DEVELOPMENT DEPARTMENT

OC: 05/30/21
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

Sara K Vaske, the claimant/appellant filed an appeal from the August 5, 2021, (reference 02) unemployment insurance (UI) decision that denied benefits from August 1, 2021 through August 7, 2021. The parties were properly notified about the hearing. A telephone hearing was held on October 7, 2021. Ms. Vaske participated and testified. The administrative law judge took official notice of the administrative record. Claimant's Exhibit A was admitted as evidence.

ISSUE:

Is Ms. Vaske able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Vaske was scheduled to meet with Iowa Workforce Development (IWD) Re-Employment Services on August 2, 2021. Ms. Vaske asked for a new meeting date since she would be out of town on that day for personal reasons. The IWD representative told Ms. Vaske that the meeting would be rescheduled and asked Ms. Vaske when she would be out of town because "if you are gone for mo[re than] three days out a single week you may not be eligible to draw unemployment for that week." Claimant's Exhibit A. Ms. Vaske understood the representative to be saying that if Ms. Vaske was out of town for three days or less then she would be eligible for UI benefits for that week. Ms. Vaske went out of town from Monday, August 2 through Wednesday, August 4 for personal reasons.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Ms. Vaske is not available for work the week of August 1-7, 2021..

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(25) provides:

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

(26) If the claimant is out of town for personal reasons for the major portion of the workweek and is not in the labor market.

To be able to work, "[a]n 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." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871-24.22(1). "An evaluation of an individual's ability to work for the purposes of determining that individual's eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides." *Sierra* at 723.

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

In this case, Ms. Vaske is not available for work the week of August 1-7, 2021. Ms. Vaske was out of town for personal reasons for three of the five days of the workweek and she was not in the labor market. The IWD representative could have been clearer in her statement to Ms. Vaske. The representative's statement to Ms. Vaske implied, but did not explicitly say, that Ms. Vaske could receive benefits if she was out of town for three days or less in one week, but that she could not get benefits if she was out of town for more than three days in one week. The implications from the representative's statement were incorrect. Ms. Vaske did not know this so she relied on the implications and was out of town for a major portion of the workweek, which made her unavailable for work during that week. Since Ms. Vaske is not available for work for work the week of August 1-7, 2021, benefits are denied for the week ending August 7, 2021.

DECISION:

The August 5, 2021 (reference 02) unemployment insurance decision is affirmed. Ms. Vaske is not available for work the week of August 1-7, 2021. Benefits are denied for the week ending August 7, 2021.



Daniel Zeno
Administrative Law Judge
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October 12, 2021
Decision Dated and Mailed

dz/mh