

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SALLY J WILL
Claimant

WISE MOTELS INC
Employer

APPEAL NO. 20A-UI-09605-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Appellant (1)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Sally Will filed a timely appeal from the August 4, 2020, reference 04, decision that denied benefits effective May 10, 2020, based on the deputy's conclusion that the claimant requested and was granted a leave of absence, was voluntarily unemployed, and was not available for work. After due notice was issued, a hearing was held on September 25, 2020. The hearing in this matter was consolidated with the hearing in Appeal Number 20A-UI-09802-JTT. Ms. Will did not provide a telephone number for the hearing and did not participate. Nicole Popp represented the employer and presented additional testimony through Hope Gettler. Exhibits 1 and 2 and A through E were received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX and WAGE-A.

ISSUES:

Whether the claimant was able to work and available for work for the period beginning May 10, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Sally Will began her employment with Wise Motels eight years ago and last performed work for the employer on April 2, 2020. Ms. Will performed her work at the employer's hotel in Atlantic, Iowa. Ms. Will has traditionally averaged 20 to 25 hours a week during the employer's peak season, which runs from April to November, and has traditionally worked fewer hours during the remainder of the year. In March 2019, the COVID-19 pandemic arrived in Iowa and began to impact the Iowa economy. Though the employer had been enjoying a year-over-year increase in business in early 2020, the arrival of the pandemic led to a decrease in bookings and prompted the business owner to apply for a Payroll Protection Program loan. The employer did not lay off any employees.

Ms. Will established an original claim for unemployment insurance benefits that was effective March 29, 2020 and earned just \$20.00 in wages during the week that ended April 4, 2020. Ms. Will's hourly wage is \$11.00. After Ms. Will worked on April 2, she began calling in absences due to illness. Ms. Will was suffering from chronic lower back pain and neuropathy

that included increasing numbness and weakness in her legs. Ms. Will has continued off work since April 3, 2020 and up to the present.

On April 13, 2020, the employer contacted Ms. Will to let her know the employer had been approved for the PPP loan and that the employer planned to immediately restore Ms. Will and other employees to their regular work hours by embarking on deep cleaning the motel. Ms. Will requested to continue off work due to her non-COVID-19 health issues. On April 17, 2020, Ms. Will provided a note from her doctor that indicated she needed to be off work for two weeks due to her worsening medical condition. On May 8, 2020, Ms. Will provided a medical note that indicated she needed to be off work through May 31, 2020 due to lower back pain and neuropathy. On May 26, 2020, Ms. Will provided a medical note that indicated she needed to be off work "until further notice due to ongoing low back pain and neuropathy." On July 31, 2020, Ms. Will provided her most recent medical note. That stated Ms. Will "remains unable to return to work at this time due to ongoing symptoms and awaiting further evaluation with neurology next month." Ms. Will has also provided a medical record that includes an August 11, 2020 addendum that indicated Ms. Will's health issue was progressive and that she was unable to perform any work.

After Ms. Will established the original claim that was effective March 29, 2020, she made consecutive weekly claims for the period of March 29, 2020 through September 19, 2020. Ms. Will received \$154.00 in regular unemployment insurance benefits for each of the weeks between March 29, 2020 and July 25, 2020. Ms. Will also received \$600.00 in Federal Pandemic Unemployment Compensation for each week between March 29, 2020 and July 25, 2020.

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(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.

Iowa Admin. Code r. 871-24.23 provides, in relevant part, as follows:

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.

Though the findings of fact include relevant findings for the period leading up to May 10, 2020, Ms. Will's appeal is from a decision that denied benefits effective May 10, 2020. The weight of the evidence in the record establishes that Ms. Will has not been able to work or available for work since May 10, 2020. Since that time, Ms. Will has been off work due to chronic, progressive medical issues, had been under the care of a doctor, has been unable to work, and has not been released to perform any work. Ms. Will is not eligible for benefits for the period beginning May 10, 2020. The able and available disqualification continued at the time of the September 25, 2020 appeal hearing.

DECISION:

The August 4, 2020, reference 04, is affirmed. The claimant has not been able to work or available for work since May 10, 2020. Benefits are denied for the period beginning May 10, 2020. The able and available disqualification continued at the time of the September 25, 2020 appeal hearing.



James E. Timberland
Administrative Law Judge

September 29, 2020
Decision Dated and Mailed

jet/sam

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. 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.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA, you may be required to repay the benefits you have received.**