

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MARSHA STORLIE
Claimant

KWIK TRIP INC
Employer

APPEAL NO. 20A-UI-05975-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/05/20
Claimant: Appellant (2R)

Iowa Admin. Code ch. 871 r. 24.23(10) – Leave of Absence
Iowa Code § 96.4-3 – Able and Available
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Federal Law PL 116-136 Sec. 2104 – Eligibility for Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated June 4, 2020 reference 01, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on July 17, 2020. Claimant participated personally and with witnesses Nevon White and Jordan Lubben. Employer participated by Leah Gebel.

ISSUES:

Whether claimant is able and available for work?

Whether claimant is on an approved leave of absence?

Whether claimant has been overpaid state unemployment benefits?

Whether claimant is eligible to receive Federal Pandemic Unemployment Compensation?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant was hired in April 2018 as a part time food sampler. That is the only position claimant has held with the company.

On March 27, 2020 employer decided that as a result of Covid, and Governor Reynold's request for businesses to alter allowable activities, employer stopped with food sampling. Claimant was offered jobs that she could not do as a result of her health difficulties. Claimant shared this information with employer, and employer and claimant agreed that claimant would not work until food sampling would return.

On June 18, 2020 employer once again started service food samples and claimant has gotten her old position back.

Claimant has received state unemployment benefits in this matter of \$574.00.

Claimant has received Federal Pandemic Unemployment Compensation benefits in this matter of \$4,200.00.

REASONING AND CONCLUSIONS OF LAW:

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.

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.

Claimant in this matter was able and available to work at the job in which she was hired and where she'd worked for the previous two years. Employer made the unilateral decision – based solely on Covid-related events – that claimant could not do her job for the period of time she

was off from work. Claimant attempted, but was unable to do other jobs offered because of physical limitations. As claimant was able and available for work and the leave was not requested by claimant, but rather requested by employer. Claimant is seen as able and available for work.

Benefits shall be allowed effective April 5, 2020.

Claimant has received state unemployment benefits in this matter of \$574.00. Claimant is entitled to these benefits.

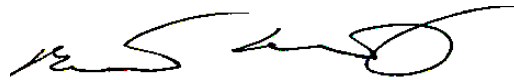
Claimant has received Federal Pandemic Unemployment Compensation benefits in this matter of \$4,200.00. Claimant is eligible for these benefits.

The layoff of claimant in this matter is entirely Covid-related. This matter will be remanded to the benefits bureau to determine whether employer's account shall be charged for Covid-related layoff.

DECISION:

The decision of the representative dated June 4, 2020, reference 01 is reversed. Claimant is eligible to receive unemployment insurance benefits, effective April 5, 2020 through June 18, 2020, provided claimant meets all other eligibility requirements.

This matter is remanded to the benefits bureau to determine whether employer's account shall be charged for Covid-related layoff.



Blair A. Bennett
Administrative Law Judge

July 23, 2020
Decision Dated and Mailed

bab/scn