

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LINDA OSHEA
Claimant

ENVOY AIR INC
Employer

APPEAL 20A-UI-06373-JC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/12/20
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant/appellant, Linda O’Shea, filed an appeal from the June 12, 2020 (reference 02) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 22, 2020. The claimant participated personally. Her co-worker, Kristi Barkl, also testified. The employer, Envoy Air Inc., did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing.

The administrative law judge took official notice of the administrative records. Claimant Exhibits A, B, and C were admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the claimant able to and available for work?
Did the claimant request a leave of absence?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant has worked for employer since 2019. Most recently, the claimant works for the employer as a part-time customer service gate agent. She works on average 26 hours per week.

The claimant filed her claim with an effective date of April 12, 2020 in response to a reduction of hours due to lack of flights, in light of COVID-19. The employer initiated a leave of absence called a Company Subsidized Leave of Absence with the claimant in response to a lack of available hours (Claimant Exhibit A). Employees were prohibited from picking up extra shifts to make up for lost hours and wages (Claimant Exhibit A).

Part-time employees were also prohibited from working more than 12 hours per week (Claimant Exhibit A). Between April 12, 2020 and July 18, 2020, the claimant's hours have fluctuated and for several weeks, no hours or shifts were offered to her. She did not request a leave of absence from the employer and has not reduced her availability or refused any shifts.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did not request a leave of absence. She is able to and available for work effective April 12, 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.

(emphasis added).

Iowa Admin. Code r. 24.22(2) provides:

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.

j. Leave of absence. A leave of absence negotiated **with the consent of both parties**, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

(emphasis added).

The credible, undisputed evidence establishes that the claimant never requested a voluntary leave of absence and is not voluntarily unemployed. Further, she has established that she is able to and available to work. As such, benefits are allowed effective April 12, 2020, provided the claimant is otherwise eligible.

DECISION:

The June 12, 2020 (reference 02) initial decision is reversed. The claimant did not request a leave of absence. The claimant is able and available for work. Benefits are allowed, provided she is otherwise eligible.



Jennifer L. Beckman
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July 30, 2020
Decision Dated and Mailed

jlb/mh