

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

LORI C HARVEY
Claimant

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

APPEAL 22A-UI-18549-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/11/22
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

On November 1, 2022, claimant Lori C. Harvey filed an appeal from the October 28, 2022 (reference 05) unemployment insurance decision that denied benefits from October 9, 2022 through October 22, 2022 based on a determination that claimant was out of town due to personal obligations and unavailable for work. The parties were properly notified of the hearing. A telephonic hearing was held at 1:00 p.m. on Tuesday, November 22, 2022. The claimant, Lori C. Harvey, participated. Iowa Workforce Development did not participate. Claimant's Exhibit A was received and admitted into the record.

ISSUE:

Was the claimant able to work and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant opened her claim for benefits with an effective date of September 11, 2022, after separating due to downsizing at her former employer. She went on to file weekly continued claims for the weeks ending October 15, 2022; and October 22, 2022.

Claimant attended a religious festival in Manson, Iowa, beginning at sunset on October 11, 2022. This festival ended at sunset on October 19, 2022, and claimant returned home the following day. Claimant concedes she was not available to work during the days that she was observing the festival in Manson. She would have potentially been able to begin a job on Monday, October 10, but she would have immediately taken off for the festival the following day. Claimant had put down on applications she completed immediately before the festival that she could begin working on October 24, 2022. Claimant made the required re-employment contacts for both weeks, either before leaving for the festival (for the week of October 9 through 15) or after returning from the festival (for the week of October 16 through 22).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was out of town for personal reasons and was not available for work. Benefits must be withheld.

Iowa Code § 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 96.1A, subsection 37", paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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 provides:

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.

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.

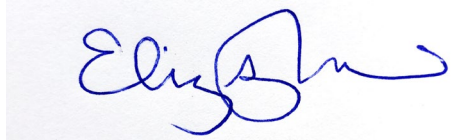
(25) If the claimant is out of town for personal reasons for the major portion of the workweek and is not in the labor market.

The claimant in this case argues that IWD has discriminated against her because of her religion by finding her unavailable to work when she was out of town observing her religious festival for the majority of two workweeks. The administrative law judge disagrees. The disqualification turns on claimant being out of town for a personal (i.e., non-work-related) reason for the majority of the workweek. There is no inquiry into the nature of the personal reason: it does not matter if the personal reason is for a protected-class-related reason such as a religious holiday, a family obligation, a political rally, a sporting event, or a Grateful Dead concert. Any absence that takes a claimant out of town for personal reasons for the major portion of the workweek renders them unavailable for work and ineligible for benefits for that particular week.

The evidence in the record shows claimant was out of town from October 11 through October 20. Therefore, the administrative law judge finds she is unavailable for work for the two-week period beginning October 9, 2022 and ending October 22, 2022. Benefits must be withheld for those two weeks.

DECISION:

The October 28, 2022 (reference 05) unemployment insurance decision is affirmed. Claimant was not available for work from October 9, 2022 through October 22, 2022. Benefits for those two weeks must be withheld.



Elizabeth A. Johnson
Administrative Law Judge

November 30, 2022
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.