

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JULIE EMBRING
Claimant

COVENANT MEDICAL CENTER INC
Employer

APPEAL 23A-UI-09116-PT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 08/13/23
Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.1A(37) – Total, Partial, and Temporary Unemployment
Iowa Admin. Code r. 871-24.23(10) – Leave of Absence

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 13, 2023 (reference 01) unemployment insurance decision that denied benefits based on a determination that claimant requested, and was granted, a leave of absence. The parties were properly notified of the hearing. A telephonic hearing was held on October 10, 2023. Claimant participated personally. The employer participated through Human Resources Representative Jamie Casar. The administrative law judge took official notice of the administrative record.

ISSUES:

Is the claimant able to and available for work?
Is the claimant totally, partially, or temporarily unemployed?
Is the claimant on an approved leave of absence?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for Covenant Medical Center Inc. as a processing technician on February 14, 2022. Claimant remains employed with Covenant Medical Center Inc., but she no longer works as a processing technician. Prior to opening her claim for benefits, claimant last reported to work for a shift on August 11, 2023.

On August 11, 2023, claimant's supervisor yelled at claimant in front of other employees. Claimant, upset by her supervisor's behavior, met with upper management and informed the employer that she was unhappy in her position, that she could not continue working with her supervisor, and that she was putting in her thirty-day notice of resignation. However, after the meeting, claimant confessed to the employer that she did not want to leave the employer, but said that she needed to find a new position in a different department. The employer informed claimant that she should discuss her options with human resources.

Later that day, claimant met with a human resources representative. The HR representative informed claimant that rather than resigning from employment, claimant could take a thirty-day,

unpaid leave of absence, wherein claimant would remain on the employer's benefits plans while she used the time to look for other positions with the employer. After discussing her options, claimant rescinded her resignation and agreed to the thirty-day leave of absence. Claimant's leave of absence began August 12, 2023.

On August 14, 2023, claimant emailed the HR representative stating that she no longer wanted to be on a leave of absence and that she wished to return to her previous position as a processing technician. In her email, claimant alleged that she had not known the leave of absence was unpaid. Claimant also said that it had been her understanding that she would be allowed to continue working as a processing technician while on the leave of absence.

Later that day, the employer responded explaining that because claimant had offered her resignation due to her dissatisfaction with her work environment, the employer could not allow claimant to return to her previous position. The employer told claimant that she could either continue with the thirty-day leave of absence or resign her position effective immediately. The employer stated that if claimant did not respond to the email, the employer would assume claimant was continuing on the thirty-day leave of absence. Claimant did not respond to the employer's email.

Over the next thirty days, claimant and the employer remained in contact about the status of claimant's job search. In early-September 2023, the employer extended claimant's leave of absence because claimant had secured several interviews for positions in different departments with the employer. As of the date of the hearing, claimant was still on a leave of absence. Claimant has remained in contact with the employer throughout her leave of absence.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is not available for work.

Iowa Code section 96.1A(37) provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time,

if the individual's employment, although temporarily suspended, has not been terminated.

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 96.1A, 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(1) 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.

Iowa Admin. Code r. 871-24.22(2) provides:

Benefit 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.

c. Intermittent employment. An individual cannot restrict employability to only temporary or intermittent work until recalled by a regular employer.

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.

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.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The findings of fact show how I have resolved the disputed factual issues in this case. I assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using my own common sense and experience. The undersigned found the employer's testimony to be more consistent with other believable evidence. For this reason, the administrative law judge has given greater weight to the employer's version of events than to the claimant's version of events.

For an unemployed individual to be eligible to receive benefits, she must be able to work, available for work, and actively seeking work as required by the unemployment insurance law. Iowa Code § 96.4(3). The burden is on the claimant to establish that she is able and available for work within the meaning of the statute. Iowa Code § 96.6(2); Iowa Admin. Code r. 871-24.22. In this case, claimant commenced an approved leave of absence in lieu of resigning from her position on August 12, 2023. This leave of absence extends through the date of the hearing, covering all of the weeks that claimant has filed for benefits. When claimant elected a leave of absence, she voluntarily removed herself from her workplace. While she may have done so for good personal reasons, once she began her leave, she was no longer available for work. Accordingly, benefits are withheld.

DECISION:

The September 13, 2023 (reference 01) unemployment insurance decision is affirmed. Claimant is not available for work effective August 13, 2023. Benefits are withheld.



Patrick B. Thomas
Administrative Law Judge

October 20, 2023
Decision Dated and Mailed

PBT/jkb

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.