

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LISA A JOHNSON
Claimant

SUNSHINE FAMILY RESTAURANT
Employer

APPEAL 21A-UI-17429-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Appellant (3)

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

STATEMENT OF THE CASE:

On August 8, 2021, claimant Lisa A. Johnson filed an appeal from the July 29, 2021 (reference 03) unemployment insurance decision that denied benefits based on a determination that effective June 21, 2020, claimant was on a leave of absence and was unavailable for work. The parties were properly notified of the hearing. A telephonic hearing was held at 2:00 p.m. on Monday, October 4, 2021. Appeal numbers 21A-UI-17429-LJ-T, 21A-UI-17430-LJ-T, and 21A-UI-17431-LJ-T were heard together and created one record. The claimant, Lisa A. Johnson, participated. The employer, Sunshine Family Restaurant, participated through Zemrija Saliu, Owner. The administrative law judge took official notice of the administrative record.

ISSUES:

Is the claimant able to work and available for work?
Was 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 Sunshine Family Restaurant, Inc., in December 2013. Claimant currently works for the employer as a full-time server.

In March 2020, the employer was forced to close its doors for a short period of time due to the COVID-19 pandemic. Claimant opened her claim for unemployment insurance benefits effective March 15, 2020, in response to this shut-down. The employer was able to reopen and work became available later that spring. On May 13, 2020, claimant gave the employer a note from her children's father's doctor. This note excused claimant from working due to her role as a caretaker during the pandemic. Specifically, the doctor did not want claimant (the caretaker for her children's father) working in a busy public setting like a restaurant and then providing direct care to her children's father, who was evidently highly susceptible to COVID-19 and for whom COVID-19 would likely be fatal.

Claimant's children's father was admitted into a nursing home on August 27, 2020. At that point, claimant became available for work. She contacted Candy at the restaurant to let her know that she was available to return. Four days later, Candy contacted her because an employee was a no-call/no-show and needed claimant to cover a shift. Claimant returned that day and has been back to full-time work ever since.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was on a leave of absence and was unavailable for work effective May 10, 2020, through August 29, 2020. Benefits are withheld for those weeks.

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.

In this case, claimant took a leave of absence from work effective May 10, 2020, which was the beginning of the week during which she gave the employer a doctor's note excusing her from work so she could care for her children's father and limit her own exposure to COVID-19, thereby limiting his exposure as well. While this was certainly a compelling reason to take a leave of absence, it was a personal decision that claimant chose to make. The employer had work available and claimant opted not to work. Therefore, benefits are withheld effective May 10, 2020, through the week ending August 29, 2020.

DECISION:

The July 29, 2021 (reference 03) unemployment insurance decision is modified in favor of the employer. Claimant was on a leave of absence and was unavailable for work effective May 10, 2020, through the week ending August 29, 2020. Benefits are withheld for those weeks.



Elizabeth A. Johnson
Administrative Law Judge
Unemployment Insurance Appeals Bureau

October 07, 2021
Decision Dated and Mailed

lj/ol