

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AMANDA M SCHUBERT
Claimant

PURE FISHING INC
Employer

APPEAL 16A-UI-12231-DL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/10/16
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 2, 2016, (reference 03) unemployment insurance decision that denied benefits based upon not being able to or available for work effective October 2, 2016. The parties were properly notified about the hearing. A telephone hearing was held on December 2, 2016. Claimant participated. Employer participated through senior human resource director of global manufacturing Shelly Krause.

ISSUE:

Is the claimant able to work and available for work effective October 2, 2016 through October 18, 2016?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed through November 11, 2016. The separation has been addressed in the November 30, 2016, (reference 04) unemployment insurance decision. Claimant expected to start another job on December 6, 2016.

There was an incident at work on September 26 that required a drug screen, which was positive for alcohol so the employer suspended her from September 27 through October 18, 2016, so she could obtain treatment and have another drug screen and return to work. She was paid during the suspension through October 5. She called employee assistance program (EAP) and met with them on October 4. The EAP facility had difficulty scheduling someone to conduct the screening so it was not done until October 11 and the result was available on October 18. The result was negative and she returned to work on October 19.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not able to work and available for work between October 2 and October 18, 2016.

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(35) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

An individual claiming benefits has the burden of proof that she is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

Claimant argues that she was entitled to benefits because it was not her fault that the drug screen was delayed. The EAP was in charge of scheduling testing so the employer was not at fault by that reasoning. The original reason the claimant was off work was due to her own action of testing positive after an incident at work. The employer was reasonable in its request to have a negative drug screen for her to be able to return to work. She was not able to do so until October 18. Accordingly, she is not eligible for unemployment insurance benefits for the period of time in question.

DECISION:

The November 2, 2016, (reference 03) unemployment insurance decision is affirmed. The claimant is not able to work and available for work effective October 2, 2016, through October 18, 2016. Benefits are withheld for that period.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs