

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STEPHANIE SKINNER
Claimant

APPEAL 21A-UI-13640-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEARS MANUFACTURING CO
Employer

**OC: 01/31/21
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 June 2, 2021, (reference 01) unemployment insurance decision that denied benefits effective January 31, 2021 based upon requesting and being granted a leave of absence. After due notice was issued, a telephone conference hearing was scheduled to be held on August 11, 2021. The claimant participated. Official notice was taken of the agency records. Exhibits A and B were received into the record.

ISSUE:

Was the claimant able to work and available for work week ending January 31, 2021?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant began working for the employer, Sears Manufacturing Company, as a full-time lead inspector on January 4, 2012. She works a set schedule from 7:00 a.m. to 3:30 p.m. Her rate of pay in January 2021 was \$22.00 per hour.

The employer has a Covid19 spread mitigation practice that states if someone has been exposed to another person who has tested positive for Covid19, then they must quarantine until they obtain a negative test result. The employer's policy does not require quarantine of someone who has been in the presence of someone, who in turn was in the presence of someone who tested positive for Covid19. However, the employer provided job protected leave for employees impacted by school closures due to Covid19.

On February 1, 2021, the claimant received a message from her son's school, Virgil Grissom Elementary, stating her son had been exposed to someone who had tested positive for Covid19. The school stated her son would have to remain at home until February 9, 2021. The claimant contacted Human Resources Administrator Taryn Keppy and initially asked for an emergency vacation day to cover her because she did not have childcare for her son.

On February 2, 2021, the claimant sent an email to Ms. Keppy requesting to take back her emergency vacation use from the previous day because her reason fell under a Covid19 related reason. The emails do not show the employer compelled the claimant to remain away from work.

On February 9, 2021, the claimant returned to work her regular schedule.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not able and available for work effective January 31, 2021.

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. 871-24.22(1)a 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.

Iowa Admin. Code r. 871-24.23 provides:

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

(1) An individual who is ill and presently not able to perform work due to illness.

(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.

(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.

The decision in this case rests, at least in part, on the credibility of the witnesses. 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.*

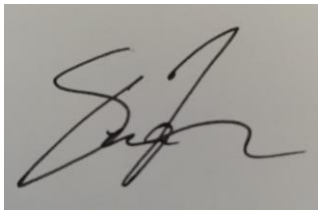
After assessing the credibility of the witnesses who testified during the hearing, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the claimant's version of events not credible, at least insofar as she is alleging the employer compelled her to quarantine. The administrative law judge makes this determination mainly from the text of the emails, which

show the claimant affirmatively requesting vacation and then Covid19 leave, rather than the employer imposing a quarantine.

The administrative law judge concurs with the representative's conclusion that the claimant requested and was granted a leave of absence. While the claimant contends the employer's Covid19 mitigation practice compelled her to be away for this period, the claimant concedes she was not able to work that week because she did not have childcare. As outlined in the findings of facts, the administrative law judge does not find credible the claimant's allegation the employer's policy would have compelled her to quarantine merely for being exposed to her son who was in turn was exposed to the presence of a Covid19 individual. The example the claimant gave for her previous compelled absence involved her being directly in the presence of someone with Covid19. Rather the claimant requested and was granted a leave of absence to take care of her child because of his quarantine and is disqualified under Iowa Admin. Code r. 871-24.23(10).

DECISION:

The June 2, 2021, (reference 01) unemployment insurance decision is affirmed. The claimant was not able to work and available for work effective January 31, 2021. Benefits are granted.



Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

August 16, 2021
Decision Dated and Mailed

smn/lj

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.