

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**JESSICA B LOGSTON**  
Claimant

**APPEAL NO: 18A-UI-11348-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARE INITIATIVES**  
Employer

**OC: 10/28/18**  
**Claimant: Appellant (1)**

Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the November 15, 2018, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 6, 2018. The claimant participated in the hearing with Attorney Richard Schmidt. The employer did not respond to the hearing notice and did not participate in the hearing.

**ISSUE:**

The issue is whether the claimant is able and available for work.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was hired as a full-time CNA at Care Initiatives on May 1, 2015, and is still employed there. She injured her back at work when lifting a resident June 18, 2018. She was sent home by the employer and went to her doctor who took her off work for two weeks. The claimant returned to work but was in continuous pain and went back to her doctor and was taken off work again toward the end of July 2018. She returned to work again August 13, 2018, but was unable to perform all of the functions of her job. She went back to see her physician and was placed on a 20 pound lifting restriction August 20, 2018. The employer would not allow the claimant to return with the lifting restriction and the claimant applied for and was granted FMLA. She remains on FMLA at this time.

**REASONING AND CONCLUSIONS OF LAW:**

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

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 96.19, 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:

(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.

When an employee requests and is granted a leave of absence, she is considered to be voluntarily unemployed during the period of the medical leave of absence. The claimant sustained a work-related injury and was on and off work before her doctor imposed a lifting restriction August 20, 2018, and the employer would not allow her to return at that time. The claimant applied for and was granted a medical leave of absence (FMLA) and remains on FMLA to date. When an individual requests a leave, she is not considered able and available for work. Accordingly, the claimant is not considered able and available for work at this time and benefits must be denied.

**DECISION:**

The November 15, 2018, reference 01, decision is affirmed. The claimant is not able to work and available for work effective October 28, 2018.

If the claimant's circumstances change and the disqualification can be removed, notification should be made to the local workforce development center.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/scn