

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GINA CAMPBELL
Claimant

HCSG CENTRAL LLC
Employer

APPEAL 20A-UI-00466-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/22/19
Claimant: Appellant (4R)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The claimant/appellant, Gina Campbell, filed an appeal from the January 14, 2020 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on February 3, 2020. The claimant participated. The employer, HCSG Central LLC., did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing.

The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the claimant able to work and available for work effective December 22, 2019?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant last performed work for the employer as a cook/dietary aide on November 12, 2019, when she broke her foot. The injury was not work related. The claimant was unable to apply for FMLA because she had just returned to work from FMLA upon the birth of her child in September 2019.

From November 12-December 19, 2019, the claimant could not perform work. The claimant could not put any weight on her foot, and was later given a scooter to rest her foot. Effective December 20, 2019, the claimant was released to perform work with the scooter. She presented the employer her doctor’s restrictions and the employer declined to accommodate the claimant’s restrictions. The claimant established her claim for unemployment insurance benefits in response to the employer not allowing her to return to work with restrictions.

On January 23, 2020, the claimant was released by her doctor to work without restrictions. She also separated from employment on that day. The issue of the claimant's separation from employment has not yet been addressed by the Benefits Bureau.

Since January 23, 2020, the claimant has been making her weekly job search contacts, has not refused any offers of work and has no other restrictions to the type of work she can accept.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge modifies the initial decision. The claimant is not able and available for work December 22, 2019-January 25, 2020. The claimant is able and available effective January 26, 2020. Benefits are allowed beginning January 26, 2020, provided she is otherwise eligible.

For an 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 claimant has the burden to show she is able to work, available for work, and earnestly and actively seeking work. The unemployment insurance rules require that an individual be physically and mentally able to work in some full time gainful employment, not necessarily in the individual's customary occupation, but a job which is engaged in by others as a means of livelihood. 871 IAC 24.22(1).

From December 22, 2019 until January 25, 2020:

Inasmuch as the claimant was still employed and her medical condition was not work-related and the treating physician did not release the claimant to return to work without restriction until January 23, 2020, she has not established her ability to work while still an employee. While she may have been able to perform light work duties, the employer is not obligated to accommodate a non-work related medical condition. Benefits are denied effective December 22, 2019 until January 25, 2020:

Effective January 26, 2020:

Since the employment ended on January 23, 2020, the claimant is no longer obligated to return to employer upon her medical release to offer her services. At that point, her ability to work is not measured by the job she held most recently, but by standards of her education, training, and work history. The claimant has presented sufficient evidence to establish she was released to work effective January 23, 2020 without restriction and otherwise able and available for work. Thus the claimant is considered as able to work as of January 26, 2020.

The claimant's January 23, 2020 separation with this employer is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

DECISION:

The unemployment insurance decision dated January 14, 2020, (reference 01) is modified in favor of the claimant. The claimant is not able and available for work December 22, 2019-January 25, 2020 and benefits are denied during this period.

The claimant is able and available effective January 26, 2020. Benefits are allowed beginning January 26, 2020, provided she is otherwise eligible.

REMAND: The claimant's January 23, 2020 separation with this employer is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Jennifer L. Beckman
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Decision Dated and Mailed

jlb/rvs