

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KELLISUE EMIG

Claimant

APPEAL 21A-UI-24708-ED-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELAND CLINICAL LABORATORIES

Employer

OC: 11/22/20

Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work

Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

On November 3, 2021, the claimant filed an appeal from the January 29, 2021, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on January 4, 2022. Claimant, Kelliesue Emig, participated. Employer, Weland Clinical Laboratories, participated through Paul Charipar and Sarah Dricken.

ISSUES:

Is the claimant able to and available for work?

Did the claimant file a timely appeal?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant has worked for employer since April 17, 2017f. Most recently, claimant works for employer as a full-time phlebotomist. Sarah Dricken is claimant's immediate supervisor. From November 6, 2020 until December 6, 2020, claimant was off work due to her COVID-19 diagnosis. Claimant returned to work on December 7, 2020 per her usual schedule.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.19(38) provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

In order to receive regular unemployment insurance benefits under Chapter 96 of the Iowa Code, a totally unemployed claimant must establish he or she is able to and available for work. Iowa Code § 96.4(3).

In this case, the claimant is totally unemployed from November 6, 2020 until December 6, 2020. So the issue is whether she is able to and available for work.

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.

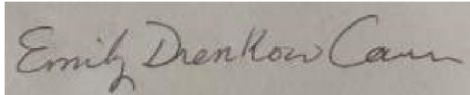
(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

Here, employer has work available for claimant. However, claimant informed employer she was unable to work due to her COVID-19 diagnosis and feeling too ill to work. Employer agreed to allow claimant time off for that reason. Claimant has not established she is able to and available for work, even under the United States Department of Labor's guidance to flexibly interpret this requirement. See Unemployment Insurance Program Letter No. 10-20.

Claimant is considered to be on a leave of absence due to her Covid-19 diagnosis and is not available for work. Therefore, claimant is not eligible for regular, state-funded unemployment insurance benefits.

DECISION:

The January 29, 2021, (reference 01) unemployment insurance decision is affirmed. The claimant is not able to work and available for work from November 6, 2020 to December 6, 2020. Regular unemployment insurance benefits funded by the state of Iowa are denied until such time claimant is able to and available for work.



Emily Drenkow Carr
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January 31, 2022
Decision Dated and Mailed

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