

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DORIS M JOHNSON
Claimant

WEST POINT CARE CENTER INC
Employer

APPEAL 21A-UI-07149-S2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/20/20
Claimant: Appellant (1R)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(10) – Able & Available – Availability Disqualifications

STATEMENT OF THE CASE:

On March 8, 2021, the claimant filed an appeal from the February 26, 2021, (reference 02) unemployment insurance decision that denied benefits based upon a finding that claimant was not able to work due to an injury. The parties were properly notified about the hearing. A telephone hearing was held on May 18, 2021. Claimant Doris M. Johnson participated. Employer West Point Care Center participated through business office manager Teresa Staub. Claimant's Exhibits A – C were received.

ISSUE:

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on June 19, 2018. Claimant worked for employer in PRN status as a laundry aide. She typically worked between 10 and 12 hours a week.

The employer required all employees to get a COVID-19 test weekly. Taking the weekly COVID-19 test is a job requirement. Even if an employee is not on the schedule, they are required to get tested. The employer also requires employees to complete occasional training.

Claimant requested, and the employer granted, a leave of absence between August 10, 2020, and September 15, 2020 due to a shoulder injury. Claimant was released to return to work without restrictions on September 15, 2020. Claimant worked on September 17, 18, and 20, 2020. She worked October 2, 3, and 4, 2020. On October 6, 2020, the employer called claimant and asked her if she wanted to work that evening. Claimant responded that she did, but then called back and informed the employer she would not work that evening. Claimant was not placed on the schedule after that time because she failed to get her weekly COVID-19 test and complete required trainings. Claimant has not contacted employer since October 6, 2020. The employer considered the claimant a voluntary quit effective February 28, 2021, because she did not take her weekly COVID-19 tests or complete the required trainings.

There has been no initial investigation or decision regarding the issue of separation from employment.

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 effective September 20, 2020.

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(16) provides:

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

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

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.*

The findings of fact show how the disputed factual issues were resolved. After assessing the credibility of the witnesses who testified during the hearing, the reliability of the evidence submitted, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge attributes more weight to the employer's version of events.

Under Iowa Employment Security Law, an individual must be unemployed through no fault of their own to be eligible for benefits. Iowa Code § 96.2. Here, claimant was not scheduled to work because she was unduly limiting her availability by not complying with the requirements to get tested for COVID-19 weekly and complete the required trainings. Additionally, claimant made no attempts to contact the employer at any time after October 6, 2020, to see if there was a reason she was not scheduled for shifts. Claimant was not available for work and benefits are denied.

The issue of separation from employment shall be remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

DECISION:

The February 26, 2021, (reference 02) unemployment insurance decision is affirmed. The claimant is not available for work effective September 20, 2020, and regular, state-funded unemployment insurance benefits are denied.

REMAND:

The issue of separation from employment is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.



Stephanie Adkisson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

May 28, 2021
Decision Dated and Mailed

sa/scn

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. 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.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA, you may be required to repay the benefits you've received so far.**