

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

HIFZA M ALI
Claimant

DICKSON INDUSTRIES INC
Employer

APPEAL NO. 21A-UI-05414-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/05/20
Claimant: Appellant (1)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 19, 2021, reference 03, decision that denied benefits effective January 17, 2021, based on the deputy's conclusion that the claimant requested and was granted a leave of absence, was voluntarily unemployed, and was not available for work. After due notice was issued, a hearing was held on April 23, 2021. Claimant participated. Allison Hogan represented the employer and presented additional testimony through Wilder Melendez. Urdu-English interpreter Muncera Syed of CTS Language Link assisted with the hearing. There were three appeal numbers set for a consolidated hearing: 21A-UI-05410-JTT, 21A-UI-05411-JTT and 21A-UI-05414-JTT. The parties waived formal notice on question of whether the claimant's appeal from the reference 01 decision was a timely appeal. Exhibits 1 through 7, A and B were received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX and WAGE-A, and the reference 01, 02, and 03 decisions.

ISSUES:

Whether the claimant was able to work and available for work during the period beginning January 17, 2021

Whether the claimant was temporarily or partially unemployed during the period beginning January 17, 2021.

Whether the employer's account may be charged for benefits for the period beginning January 17, 2021.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant established an original claim for benefits that was effective April 5, 2020. At that time, Iowa Workforce Development set the claimant's weekly benefit amount at \$301.00. The claimant established "additional claims" for benefits that included an "additional claim" that was effective January 17, 2021. The present matter concerns that additional claim for benefits. However, some background concerning earlier events is necessary for context.

By the time of the appeal hearing, the claimant had made weekly claims for each of the weeks between January 17, 2021 and April 17, 2021. The claimant reported zero wages for each of those weeks.

At the time claimant established the additional claim that was effective January 17, 2021, she had been most recently employed by Dickson Industries, Inc. as a full-time sewer/seamstress. The claimant had last performed work for the employer on November 11, 2020.

The employer has at all relevant times had full-time work available to the claimant. Prior to the period in question the employer implemented in the workplace all COVID-19 precautions recommended by the Centers for Disease Control (CDC).

The claimant is a native Urdu speaker. The claimant's adult son is bilingual in Urdu and English. The claimant resides with her son and had immediate access to her son's assistance at all relevant times. When the claimant was away from work, the claimant and the employer communicated through the claimant's son.

On November 16, 2020, the claimant's son emailed to the employer a leave of absence request on behalf of the claimant. The claimant's son told the employer that the claimant had either a cold or the flu. The claimant's son told the employer that he had been exposed to COVID-19, that he was currently ill and that he was awaiting his COVID-19 test results. The claimant's son told the employer that he had been advised to quarantine until he received his COVID-19 test result. The claimant's son told the employer that the claimant also needed to quarantine because they shared a household.

On November 24, 2020, the employer sent an email message to the claimant's son in which the employer requested an update regarding when the claimant would be returning to the employment.

On November 25, 2020, the claimant's son sent the employer an email message advising that the claimant hoped to return to work the following week. The claimant did not return to the employment the following week.

On December 11, 2020, the employer sent an email message to the claimant's son. The employer advised that the employer had just left a voicemail message for the claimant and requested a prompt response.

On December 14, 2020, the claimant's son sent an email message to the employer. The claimant's son told the employer that the claimant had recently met with a doctor for a medical checkup, that the doctor advised the claimant was at high risk, meaning at high risk in connection with the COVID-19 pandemic, and that the claimant would remain on a leave of absence until a vaccine became available. The claimant's son attached a December 11, 2020 medical note. The note was from a doctor affiliated with Broadlawns Medical Center. The doctor wrote, "I recommend patient remain on hiatus pending access to the COVID vaccine." She has multiple comorbidities and is high risk if she were to become ill." The note stated the claimant's return to work date was "uncertain."

On December 14, 2020, the employer sent an email message to the claimant's son in which the employer acknowledged the response. The employer stated the employer would pay the claimant sick pay through the end of the year.

On December 30, 2020, the employer sent an email message to the claimant's son. The employer stated the claimant would receive her last paycheck that week. The employer asked whether the claimant would be returning to work. The employer stated, "If not I will need to know how to proceed with her employment at Dickson." The claimant did not return to work.

On January 3, 2021, the claimant's son sent an email message to the employer. The claimant's son told the employer the claimant was doing well in general, recently had a normal checkup, and was awaiting the results of a blood test. The claimant's son stated that the claimant wanted to return to work, but based on her doctor's advice would appreciate it if she could be excused until she got vaccinated. The claimant's son told the employer the claimant was in an age group considered to be more vulnerable to the COVID-19 virus. The claimant's son asserted the claimant had first been exposed to the COVID-19 virus in the workplace and referred to an earlier quarantine period. The claimant's son stated it might be a while before the claimant could be vaccinated, but that he hoped the claimant's doctor would call soon. The claimant's son referenced a new COVID-19 federal stimulus package and asked whether the employer would extend the claimant's pay. The employer did not continue the claimant's sick pay into the new year.

At the time of the appeal hearing, the claimant had not returned to the employment.

REASONING AND CONCLUSIONS OF LAW:

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(2) 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.

(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(1), (10) and (35) 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.

Iowa Code section 96.1A(37) 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.

If a claimant individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. Iowa Code section 96.7(2)(a)(2)(a).

The claimant is not eligible for regular state benefits for period beginning January 17, 2021. During that period, the claimant was under a doctor's care, had not been released to return to work, and was not available for work. The claimant had not been temporarily or partially unemployed since January 17, 2021. Rather, the employer continued to have the same full-

time work available for the claimant. The employer's account will not be charged for benefits for the relevant period.

DECISION:

The March 19, 2021, reference 03, decision is affirmed. The claimant is not eligible for regular state benefits for the period beginning January 17, 2021. The claimant not been able or available for work within the meaning of the law since January 17, 2021. The claimant has not been temporarily or partially unemployed within the meaning of the law since January 17, 2021. The employer's account will not be charged for benefits for the relevant period.



James E. Timberland
Administrative Law Judge

August 24, 2021
Decision Dated and Mailed

jet/scn