

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SARAH J DAVIS
Claimant

HY-VEE INC
Employer

APPEAL NO. 21A-UI-05465-B2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/15/20
Claimant: Appellant (1)

Iowa Admin. Code ch. 871 r. 24.23(10) – Leave of Absence
Iowa Code § 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated February 5, 2021 reference 01, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on April 23, 2021. Claimant participated personally. Employer participated by hearing representative Barbara Buss and witness Eric Lahart. Claimant's Exhibits 1-3 were admitted into evidence.

ISSUE:

Whether claimant is able and available for work?

Whether claimant is on an approved leave of absence?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant currently works as a part time cashier for employer. As a part time employee, claimant is not guaranteed any specific number of hours. She was employed in the same position in October 2020 when claimant broke her ankle while at home. The injury was not work-related.

Claimant's doctor issued a work restriction for claimant limiting both the hours that claimant could work and the type of work that claimant could do. Employer complied with the doctor's work restriction and kept claimant working short shifts while seated to comply with the doctor's restrictions. Claimant's reduction of hours and wages from the period of November 15 through December 19, 2020 was a result of the employer complying with the doctor's request that claimant would not be able to work full days as she'd normally done.

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(1)a 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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

Iowa Admin. Code r. 871-24.23(35) provides:

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

(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.

Inasmuch as the injury was not work-related and the treating physician had not released the claimant to return to work during the period claimant filed for and received benefits, the claimant has not established the ability to work for the times she was not working. Benefits are withheld for the period between November 15-December 19, 2020.

DECISION:

The decision of the representative dated February 5, 2021, reference 01 is affirmed. Claimant is not eligible to receive unemployment insurance benefits, effective November 15 through December 19, 2020, as she was not able and available to work her normal hours.



Blair A. Bennett
Administrative Law Judge

April 28, 2021
Decision Dated and Mailed

bab/ol