

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DEBRA L LAPPE
Claimant

ABCM CORPORATION
Employer

APPEAL 21A-UI-18158-DH-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 03/29/20
Claimant: Appellant (2)

Iowa Code § 96.4(3) - Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(1) - Illness

STATEMENT OF THE CASE:

On August 17, 2021, the claimant, Debra Lappe, filed an appeal from the August 10, 2021 (reference 05) unemployment insurance decision that determined that claimant was unable to work due to illness and denied benefits as of March 29, 2020. The parties were properly notified of the hearing. A telephonic hearing was held on October 8, 2021. The claimant participated. The employer, ABCM Corporation, participated in the hearing through Krystal Thoe and Carman Ostrem. No exhibits were offered. The administrative law judge took official notice of the administrative record. The parties were confused as to why there was a hearing as this issue was previously adjudicated and ruled upon. It appears that is the case and neither party challenged the earlier decision allowing benefits and the employer is not now challenging benefits.

ISSUE:

Was 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 was employed by ABCM Corporation in a full time capacity. Claimant was on an FMLA leave that ended March 23, 2020 and claimant returned to full time work on March 24, 2020 and worked full time through April 29, 2020. As such, there was no March 29, 2021 illness.

Claimant's was switched from full time to variable employment as of April 30, 2021 at claimant's request. Claimant is still employed but instead of full time, the employer calls claimant when they have any hours for claimant to work. Claimant is able and available to work. Claimant remained a variable employee until her last day of March 24, 2021. Claimant was separated from employment on that date due to no hours available for her to work during that year period.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was in fact working March 29, 2020 and around that timeframe and therefore was able to and available for work.

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) 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.

b. Interpretation of ability to work. The law provides that an individual must be able to work to be eligible for benefits. This means that the individual must be physically able to work, not necessarily in the individual's customary occupation, but able to work in some reasonably suitable, comparable, gainful, full-time endeavor, other than self-employment, which is generally available in the labor market in which the individual resides.

Iowa Admin. Code r. 871-24.23(1) 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.

Both parties agree that claimant was working full time from March 24, 2020 through April 29, 2020 which covers the March 29, 2020 date. Claimant was otherwise able to and available for work. Benefits are allowed, provided she is otherwise eligible.

DECISION:

The August 10, 2021 (reference 05) unemployment insurance decision is **REVERSED**. Claimant was able to work and available for work. There was no March 29, 2020 illness with missed work. Benefits are allowed, provided she is otherwise eligible.



Darrin T. Hamilton
Administrative Law Judge

October 13, 2021
Decision Dated and Mailed

dh/mh