

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

WENDY A BARRIOS-SANCHEZ
Claimant

GREER CLEANING LLC
Employer

APPEAL NO. 20A-UI-11700-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/15/20
Claimant: Appellant (1)**

Iowa Code § 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated September 16, 2020 reference 01, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on November 16, 2020. Claimant participated personally. Employer failed to respond to the hearing notice and did not participate.

ISSUES:

Whether claimant is able and available for work?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant works as a full time employee for employer. On or around March 17, 2020 claimant asked for and received a leave of absence from work such that she could take care of her school-aged daughter who's school had shut down. Claimant stated that after the school year, her normal daycare provider was also shut down so claimant did not go back to work. Then, this fall, claimant's child has participated in hybrid classes before being sent home for classes again recently. Claimant stated that she has not been able to get her child enrolled in school-based daycare.

Claimant stated that although she continues to be off from work, she also continues to be employed by employer.

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(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.

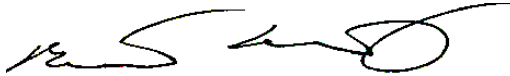
Inasmuch as claimant and employer have reached an agreement whereby claimant is on an ongoing leave of absence, under Iowa law this means that claimant is not able and available for work during this period. Benefits are denied under state law.

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits. 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 due to disqualifying separations 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.** More information about how to apply for PUA is available online at:
www.iowaworkforcedevelopment.gov/pua-information

DECISION:

The decision of the representative dated September 16, 2020, reference 01 is affirmed. Claimant is not eligible to receive regular state unemployment insurance benefits, effective March 15, 2020, as claimant and employer have reached an agreement whereby claimant is on an ongoing leave of absence. Under Iowa law this means that claimant is not able and available for work during this period.



Blair A. Bennett
Administrative Law Judge

November 23, 2020
Decision Dated and Mailed

bab/scn