

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

GAMAL ELFAHAL
Claimant

STAFF MANAGEMENT SOLUTIONS LLC
Employer

APPEAL NO. 21A-UI-17947-B2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/11/21
Claimant: Appellant (4)**

Iowa Code § 96.5-1 – Voluntary Quit
Iowa Code § 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated August 6, 2021, reference 02, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on October 6, 2021. Claimant participated. Employer participated by Susan Murphy. Interpretive services were provided by CTS Language Link.

ISSUES:

Whether claimant voluntarily quit with good cause attributable to employer?

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 last worked for employer on April 14, 2021. After that date, claimant informed employer that he'd tested positive for Covid. Claimant work from was off from work until 26 when he called his supervisor to alert him that hi seven children were positive for Covid and he wasn't sure when he'd be back as they needed to quarantine for two weeks under school rules, and he wasn't sure if there were additional problems.

Employer stated that she tried to call claimant after he'd spoken with the other supervisor. Employer left multiple messages that were not returned. Claimant stated he did not believe he received the messages, but couldn't say for sure as he was dealing with many issues. As claimant did not return employer's messages, employer terminated claimant.

Employer stated that claimant was welcome to reapply for his position as soon as he was healthy enough to do so. Employer further stated that claimant could have had his hours and position back, but needed to be a rehire.

Claimant was able to return to work on May 24, 2021.

REASONING AND CONCLUSIONS OF LAW:

Initially, for the following reasons, claimant was not able and available for work, and thus not able and available for regular unemployment benefits until May 24, 2021.

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.

Here, claimant was not able and available for work from the date of his filing of an original claim on April 14, 2021 until he presented himself as being able to work on May 24, 2021. For that period of time, claimant is not eligible for regular unemployment benefits.

Although claimant is not eligible for regular benefits for this period, he may be eligible for PUA benefits. A note at the bottom of this decision will provide guidance.

The issue of the job separation is discussed next. Employer terminated claimant for not returning employer's phone calls. Employer deemed claimant to have quit as he did not return calls. Employer showed no documentation that not returning phone calls would suffice as a reason for termination under company policy. In the absence of this documentation, employer knew that claimant was not going to return to work as multiple members of claimant's household were afflicted with Covid. Claimant shared this information with employer's representative. The representative told claimant that he would have to reapply if he was out for a number of additional weeks after he'd already missed 10 days. The matter is examined as claimant quitting his employment.

Iowa Code section 96.5(1)f provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:

f. The individual left the employing unit for not to exceed ten working days, or such additional time as may be allowed by the individual's employer, for compelling personal reasons, if so found by the department, and prior to such leaving had informed the individual's employer of such compelling personal reasons, and immediately after such compelling personal reasons ceased to exist the individual returned to the individual's employer and offered the individual's services and the individual's regular or comparable work was not available, provided the individual is otherwise eligible; except that during the time the individual is away from the individual's work because of the continuance of such compelling personal reasons, the individual shall not be eligible for benefits.

The administrative law judge holds that the evidence has established that claimant was in contact with employer after his family had recovered from Covid. Claimant kept employer informed when his illness spread to his family and gave a rough estimate as to when he could return. Claimant did return at that time and employer did not place claimant back in his position once claimant's compelling personal reasons for not being at work had subsided. This is a quit that does not disqualify claimant from receipt of benefits.

In this matter, claimant is not eligible for regular unemployment benefits from the date of filing of his original claim until May 24, 2021. After that date, claimant is eligible for benefits as his separation is not disqualifying.

DECISION:

The decision of the representative dated August 6, 2021, reference 02, is modified in favor of claimant. In this matter, claimant is not eligible for regular unemployment benefits from the date of filing of his original claim until May 24, 2021. After that date, claimant is eligible for benefits as his separation is not disqualifying provided claimant is otherwise eligible.



Blair A. Bennett
Administrative Law Judge

October 08, 2021
Decision Dated and Mailed

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Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits for the dates of April 11 through May 24, 2021. 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. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.