

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LORI A HEROD
Claimant

APPEAL 21A-UI-08978-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 03/14/21
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

Lori A Herod, the claimant/appellant, filed an appeal from the April 5, 2021 (reference 03) unemployment insurance decision that denied benefits. Ms. Herod was properly notified about the hearing. A telephone hearing was held on May 22, 2021. Ms. Herod participated and testified. Official notice was taken of the administrative record. Ms. Herod waived notice on the issue of ability to and availability for work.

ISSUES:

Is Ms. Herod able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: In March 2020, the United States declared a public health emergency because of the COVID-19 pandemic. Ms. Herod began experiencing COVID-19 symptoms in March 2020. Ms. Herod's doctor advised her to stay home from work in March 2020. Ms. Herod was subsequently fired for her job and moved to South Carolina in December 2020.

Ms. Herod continues to experience COVID-19 symptoms. The symptoms are less bad but persist. Ms. Herod is scheduled to see a lung specialist in June 2021 about her ongoing COVID-19 symptoms.

Ms. Herod has 17 years of experience as a nurse, first as a licensed practical nurse (LPN) and then as a registered nurse (RN). In her last employment she was a clinical supervisor. Her job required her to do some office work. She also did supervisory visits to observe the work of other nurses and she would occasionally cover home visits. Ms. Herod was not able to do that job due to her symptoms.

Ms. Herod is able to work with accommodations. Ms. Herod is able to work part-time as a registered nurse or in other jobs. Ms. Herod is not able to work full-time. She is also not able to work in a hospital setting due to the fast-pace.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that Ms. Herod is able to and available for work effective March 14, 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.

To be able to work, "[a]n 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." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871-24.22(1). "An evaluation of an individual's ability to work for the purposes of determining that individual's eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides." *Sierra* at 723.

A person claiming benefits has the burden of proof that she is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

In this case, Ms. Herod is able to work with accommodations. Ms. Herod is able to work in nursing positions that allow her to follow her doctor's advised and/or accommodate her lingering COVID-19 symptoms. Ms. Herod has demonstrated that she is able to and available for work. Benefits are allowed.

DECISION:

The April 5, 2021 (reference 03) unemployment insurance decision is reversed. Ms. Herod is able to and available for work. Benefits are allowed, provided she is otherwise eligible.



Daniel Zeno
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

June 01, 2021
Decision Dated and Mailed

dz/ol