

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**SHANNON S GARDNER**

Claimant

**APPEAL 18R-UI-09383-LJ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE UNIVERSITY OF IOWA**

Employer

**OC: 06/17/18**

**Claimant: Appellant (1)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work

Iowa Admin. Code r. 871-24.22(2) – Able & Available – Benefits Eligibility Conditions

Iowa Admin. Code r. 871-24.23(10) – Able & Available – Leave of Absence

Iowa Admin. Code r. 871-24.22(2)j – Benefit Eligibility Conditions – Leave of Absence

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the July 23, 2018, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was not available for work because she was on an approved leave of absence. The parties were properly notified of the hearing. A telephone hearing was held on October 4, 2018. The claimant, Shannon S. Gardner, participated and was represented by Tarek Khowassah, Attorney at Law. The employer, The University of Iowa, participated through Becky Illiff, Leave and Disability Administrator; and Mary Eggenburg, Benefits Specialist. Claimant's Exhibits A through S were received and admitted into the record without objection.

**ISSUE:**

Is the claimant able to work and available for work effective June 17, 2018?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time, most recently as a clinical technician 1, beginning November 28, 2016, until June 4, 2018, when she went on a leave of absence. Claimant was hired into a rotator position, meaning that she worked all three shifts. The employer prepared a six-week "block" schedule and claimant would be scheduled for hours on first, second, and third shifts over any six-week period. During claimant's base period of employment, she worked first, second, and third shift. Prior to May 10, claimant applied for a day shift position and was rejected. (Exhibit D2) Claimant then contacted her supervisors about the possibility of moving to a straight second shift position. (Exhibit D1) Claimant indicated that she had a non-work-related health condition that was being aggravated by her rotating position. (Exhibit D1-D2) The supervisors forwarded claimant's message and information to Bryant Gilbert in the Leave and Disability Office, and he responded to claimant to inquire about the need for an accommodation. (Exhibit E1) Claimant then provided the employer with documentation from her medical providers stating she cannot work overnight shifts. (Exhibit B) At this point, the employer

responded and told claimant it could not accommodate her restrictions and she would be placed on a leave of absence beginning June 4, 2018. (Exhibit F1) On August 8, claimant was released to return to working all three shifts, and the employer began scheduling her as it had shifts available. Claimant reported that she applied for two jobs that week, and she was physically able to work that week. She provided a list of the jobs for which she applied during her leave of absence. (Exhibit S)

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was on a leave of absence and was not available for work through the week ending August 11, 2018. Benefits are allowed effective August 5, 2018.

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(2)(1) and (2) provides:

Benefit 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.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment

for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

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.

An individual 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, claimant was placed on a leave of absence because she was not able to work in her normal capacity due to a non-work-related illness or injury. The employer was not under any obligation to accommodate claimant (for unemployment insurance purposes). Therefore, the employer granted claimant a leave of absence. Claimant has not established that she was available for work, and therefore benefits are withheld during the period of claimant's leave of absence.

**DECISION:**

The July 23, 2018, (reference 01) unemployment insurance decision is affirmed. Claimant is not able to and available for work effective June 17, 2018 through the week ending August 11, 2018. Benefits are withheld for that eight-week period.

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Elizabeth A. Johnson  
Administrative Law Judge

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Decision Dated and Mailed

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