

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

COLLEEN E MURPHY
Claimant

CASEY'S MARKETING COMPANY
Employer

APPEAL 21A-UI-15446-DB-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 04/11/21
Claimant: Appellant (5)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 29, 2021 (reference 02) unemployment insurance decision that denied benefits to the claimant based on a leave of absence from work. The parties were properly notified about the hearing. An appeal hearing was scheduled for August 30, 2021 following due notice. Claimant participated personally. The employer did not participate. Claimant's Exhibit A was admitted. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

ISSUES:

Was the claimant able to and available for work?
Was the claimant on an approved leave of absence?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant has worked for employer for approximately eight years and continues to work there to date. She works part-time as a cashier. On November 18, 2020, her medical provider instructed her that she should not be working due to her underlying health conditions and the fact that she was more susceptible to serious complications should she contract the COVID-19 virus. See Exhibit A. Claimant spoke to her medical provider again in April of 2021, who advised her that she could work no more than one day per week because of her chronic medical condition. Claimant has been only working one day per week based upon her medical provider's instructions beginning in April of 2021. She is not available for additional shifts due to her medical provider's instructions. Prior to the COVID-19 pandemic, she worked up to five days per week as a part-time employee.

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", subparagraph (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. 871-24.22(2) 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.

(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.

Iowa Admin. Code r. 871-24.23(35) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

Iowa Admin. Code r. 871-24.23(3) provides:

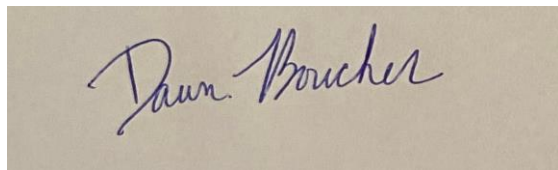
Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(3) If an individual places restrictions on employability as to the wages and type of work that is acceptable and when considering the length of unemployment, such individual has no reasonable expectancy of securing work, such individual will be deemed not to have met the availability requirements of Iowa Code section 96.4(3).

The burden is on the claimant to establish that she is able to work and available for work within the meaning of the statute. Iowa Code § 96.6(2); Iowa Admin. Code r. 871-24.22. The claimant was not working her regular part-time schedule and is restricting her available work hours due to her medical provider instructing her to only work one day per week. As such, claimant's employment has been reduced because of her own limitations and not a lack of work by the employer. Regular unemployment insurance benefits funded by the State of Iowa are denied effective April 11, 2021 and continuing until the claimant is no longer placing restrictions on her employment hours and establishes that she is able to and available for work.

DECISION:

The June 29, 2021 (reference 02) unemployment insurance decision is modified with no change in effect. The claimant is not on a voluntary leave of absence from work but she is not able to and available for work pursuant to Iowa Code § 96.4(3) as she is placing restrictions on her employability due to her medical provider's instructions that she limit her work availability to one day per week. As such, benefits are denied effective April 11, 2021 as the claimant is not able to and available for work according to Iowa law.



Dawn Boucher
Administrative Law Judge

September 3, 2021
Decision Dated and Mailed

db/mh