

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MELISSA STOKES
Claimant

APPEAL 21A-UI-24386-ED-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERISTAR CASINO COUNCIL BLUFFS
Employer

OC: 10/18/20
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22 – Able & Available – Benefits Eligibility Conditions

STATEMENT OF THE CASE:

Claimant filed an appeal from the January 13, 2021 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on December 30, 2021. Claimant, Melissa Stokes, participated. Employer Ameristar Casino Council Bluffs, participated through hearing representative Anthony Scott and through Tammy Denman.

ISSUES:

Whether claimant is able to and available for work.
Whether claimant is on an approved leave of absence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time as maintenance. Claimant left early on October 2, 2020. She returned to work on November 2, 2020. Claimant was out from work due to home quarantine and isolation due to COVID-19. Claimant was paid the paid time off that she had accrued at that time. When claimant returned to work, she submitted a document from the County Public Health department releasing her to work on November 1, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was not able to and available for work because claimant was on a leave of absence.

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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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) 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.

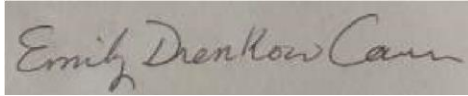
(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

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

Claimant was on an approved leave of absence from October 2, 2020 until November 1, 2020. Accordingly, claimant is not eligible for unemployment insurance benefits.

DECISION:

The January 13, 2021 (reference 01) unemployment insurance decision is affirmed. Claimant was not able to and available for work from October 2, 2020 until November 1, 2020. Benefits are denied.



Emily Drenkow Carr
Administrative Law Judge
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January 26, 2022
Decision Dated and Mailed

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