

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI

CAROL A BULLARD FISHER
Claimant

APPEAL NO. 18A-UI-05079-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 03/18/18
Claimant: Appellant (1)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Carol Bullard Fisher filed a timely appeal from the April 20, 2018, reference 02, decision that denied benefits for the five-week period of March 18, 2018 through April 21, 2018, based on the Benefits Bureau deputy's conclusion that Ms. Bullard Fisher was on vacation and not available for work during that period. After due notice was issued, a hearing was held on May 18, 2018. Ms. Bullard Fisher participated personally and was represented by non-attorney representative Tammy Hill. Ms. Bullard Fisher and Ms. Hill each testified. The employer provided written notice that it waived participation in the appeal hearing. Exhibit A was received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO, KCCO and the Benefits Bureau deputy's notes concerning the April 18, 2018 fact-finding interview.

ISSUES:

Whether and when Ms. Bullard Fisher was able to work and available to work within the meaning of the law during the five-week period of March 18, 2018 through April 21, 2018.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: During the week of March 18-24, 2018, Carol Bullard Fisher used her home computer to establish an original claim for unemployment insurance benefits that Iowa Workforce Development deemed effective March 18, 2018. Ms. Bullard Fisher established her claim for unemployment insurance benefits in response to a March 20, 2018 involuntary separation from full-time employment with Optimae Life Services.

Ms. Bullard Fisher has been employed by Casey's Marketing Company since January 2017 as a part-time Pizza Delivery Driver. Prior to her March 20, 2018 separation from the Optimae employment, Ms. Bullard Fisher worked one to three shifts per week at Casey's. Ms. Bullard Fisher continued as a Casey's employee after her separation from Optimae, but requested a leave of absence from the Casey's employment on or about March 21, 2018. Ms. Bullard Fisher suffers from bipolar disorder. Ms. Bullard Fisher's involuntary separation from full-time employment at Optimae and the state of her mental health following that separation, prompted

Ms. Bullard Fisher to ask Casey's for "a vacation." Though Ms. Bullard Fisher advises that she was experiencing a period of depression in connection with her involuntary separation from Optima, a doctor had not taken Ms. Bullard Fisher off work. Ms. Bullard Fisher's supervisor, Autumn (last name unknown), approved Ms. Bullard Fisher's request to be temporarily removed from the Casey's work schedule. While Ms. Bullard Fisher was off work, she spent some of her evenings helping a friend pack boxes in connection with a move and the friend's sale of a house. Ms. Bullard Fisher waited until Wednesday, April 18, 2018, to contact Casey's about being returned to the work schedule. That contact followed Ms. Bullard Fisher's participation in a fact-finding interview that addressed her availability for work. At the fact-finding interview, Ms. Bullard Fisher told the Benefits Bureau deputy that she had been on an unpaid "vacation" for three weeks and may or may not be returning to the Casey's employment later in the week of the fact-finding interview. Ms. Bullard Fisher returned to the part-time employment at Casey's during the week of April 22-28, 2018.

Ms. Bullard Fisher ran into difficulties with her Iowa Workforce Development PIN when she attempted during the week of March 25, 2018 to make a timely weekly claim for the benefit week that ended March 24, 2018. During the benefit week that ended March 24, 2018, Ms. Bullard Fisher had applied for work at McDonald's, Target and Wendy's. On or about March 27, 2018, Ms. Bullard Fisher spoke with an Iowa Workforce Development representative about her difficulty in making the weekly claim. Ms. Bullard Fisher provided her weekly claim information to the representative, but the representative did not enter the weekly claim information in the weekly claim reporting system.

Ms. Bullard Fisher continued to apply for work and continued to experience problems with her IWD PIN during the second week and subsequent weeks of her unemployment insurance claim.

During the week of March 25-31, 2018, Ms. Bullard Fisher applied online for a job at Walmart and at Broadlawns Medical Center. Ms. Bullard Fisher also applied online for what she believed was a job with Uber. During the week of April 1, 2018, Ms. Bullard Fisher spoke to a Workforce Development representative to make a timely weekly claim for the benefit week that ended March 31, 2018.

During the week of April 1-7, 2018, Ms. Bullard Fisher applied for employment with Child Guidance and with Child Serve. These prospective employments were within Ms. Bullard Fisher's field. Ms. Bullard Fisher has a master's degree in social work. During the week of April 8, 2018, Ms. Bullard Fisher spoke to a Workforce Development representative to make a timely weekly claim for the benefit week that ended April 7, 2018.

During the week of April 8-14, 2018, Ms. Bullard Fisher applied for a social work position at Catholic Health Initiatives (CHI) -- Mercy Hospital. Ms. Bullard Fisher also applied for a manager/supervisor position at Link Associates. During the week of April 15, 2018, Ms. Bullard Fisher spoke to a Workforce Development representative to make a timely weekly claim for the benefit week that ended April 14, 2018.

Ms. Bullard Fisher did not make a weekly claim for the benefit week that ended April 21, 2018. However, during that week Ms. Bullard Fisher had applied for work at Kum & Go, Quik Trip, and the mortgage division of Wells Fargo Bank. Ms. Bullard Fisher had previously performed work for Wells Fargo Bank.

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", 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.

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.

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

24.23(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.

Iowa Administrative Code rule 871-24.2(1)(g)(1) provides:

No continued claim for benefits shall be allowed until the individual claiming benefits has completed a continued claim or claimed benefits as otherwise directed by the department.

1. The weekly continued claim shall be transmitted not earlier than 8 a.m. on the Sunday following the Saturday of the weekly reporting period and, unless reasonable cause can be shown for the delay, not later than close of business on the Friday following the weekly reporting period.

The weight of the evidence establishes that Ms. Bullard Fisher was at all relevant times able to work within the meaning of the law. A doctor had not taken Ms. Bullard off work.

The weight of the evidence in the record establishes that Ms. Bullard Fisher did not meet the work availability requirement during the five-week period of March 18, 2018 through April 14, 2018. Though Ms. Bullard Fisher made a sufficient number of job contacts during each of those weeks, and made weekly claim reports for those weeks via direct contact with an IWD representative, there was more to the availability requirement. The weight of the evidence in the record establishes that Ms. Bullard Fisher requested a leave of absence from the Casey's employment on or about March 21, 2018 and that the employer approved the request for a leave of absence. The weight of the evidence in the record establishes that Ms. Bullard Fisher did not contact Casey's about returning to the work schedule until Wednesday, April 18, 2018, following the fact-finding interview that addressed whether she was available for work within the meaning of the law. Ms. Hill confirmed April 18, 2018 as the date Ms. Bullard Fisher made contact with the employer regarding a return to work. Ms. Bullard Fisher provided internally contradictory and unreliable testimony regarding when she made initial contact with Casey's about returning to work. At various points in the hearing, Ms. Bullard Fisher asserted she made her initial contact with Casey's about returning to work via a text message on April 1, via a phone call to the supervisor on April 1, via a text message to the supervisor on April 7, and via a phone call to the supervisor on April 25. The weight of the evidence established that none of these dates is reliable. Ms. Hill's testimony about the April 18 initial contact with the employer about a return to work is consistent with the statement Ms. Bullard Fisher provided at the time of the fact-finding interview, which statement included that Ms. Bullard Fisher had been "on vacation" for three weeks and may or may not be returning to the Casey's employment soon.

Though Ms. Bullard Fisher made herself available for the Casey's employment effective Wednesday, April 18, 2018, and that she made the requisite number of job contacts that week, the weight of the evidence establishes that Ms. Bullard Fisher did not make a weekly claim for the benefit week that ended April 21, 2018. In the absence of a weekly claim, Ms. Bullard Fisher cannot be deemed available for work for the benefit week that ended April 21, 2018 and is not eligible for benefits for that week.

DECISION:

The April 20, 2018, reference 02, decision is affirmed. The claimant did not meet the availability requirement during the five-week period of March 18, 2018 through April 21, 2018 and is not eligible for benefits for that five-week period.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs