

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**SCHAE M SHEPHERD**  
Claimant

**TYSON FRESH MEATS INC**  
Employer

**APPEAL 21A-UI-07998-LJ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/13/20**  
**Claimant: Appellant (4)**

Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871—24.23(10) – Leave of Absence

**STATEMENT OF THE CASE:**

On March 20, 2021, the claimant, Schae M. Shepherd, filed an appeal from the March 18, 2021 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was on a leave of absence and was ineligible for benefits. The parties were properly notified of the hearing. A telephonic hearing was held at 3:00 p.m. on Tuesday, June 1, 2021. The claimant, Schae M. Shepherd, participated. The employer, Tyson Fresh Meats, Inc., participated through Lori Drenzo, Human Resource Administrator. The administrative law judge took official notice of the administrative record.

**ISSUES:**

Is claimant able to and available for work?  
Is 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 was employed full time, most recently as a cryovac operator, from November 16, 2020 until February 13, 2021, when quit to accept other employment.

Claimant filed a weekly continued claim for benefits for the weeks ending December 26, 2020, and January 2, 2021. She was not allowed to work those two weeks. When claimant reported to work at the beginning of the week of December 20-26, she had a fever and the employer sent her home. The employer required her to produce evidence of two negative COVID-19 tests before it would allow her to return to work. Because of test processing time and the Christmas and New Year's holidays, it took claimant two weeks to comply with this directive. Therefore, claimant was not able to return to work until January 4, 2021.

During the week of February 7 through February 13, claimant was not able to work due to personal illness. She went to the emergency room on or about Sunday, February 7, with symptoms of COVID-19. Claimant ended up testing negative for COVID-19, but she tested

positive for influenza. Claimant testified that she was ill to the point where she could not effectively work.

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

For the reasons that follow, the administrative law judge concludes claimant is eligible for benefits for the two-week period ending January 2, 2021. Claimant is not eligible for benefits for the one-week period ending February 13, 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. 871-24.23(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.

Here, claimant was on a mandatory leave of absence during the weeks of December 20 and December 27, while she awaited her COVID-19 test results. Claimant did not request a leave of absence during these weeks; she would have preferred to continue working. However, due to the pandemic and the risk of exposing coworkers to COVID-19, the employer required claimant to produce two negative COVID-19 tests before returning to work, as she had presented at work with a temperature. Because it was the employer's choice that claimant was placed on a leave of absence and not claimant's choice, the administrative law judge finds that claimant was not on a voluntary leave of absence. Claimant was otherwise able to and available for work. Benefits are allowed for the two-week period ending January 2, 2021, provided she is otherwise eligible.

The next period in question is the week ending February 13, 2021. Iowa Admin. Code r. 871-24.23(1) provides:

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

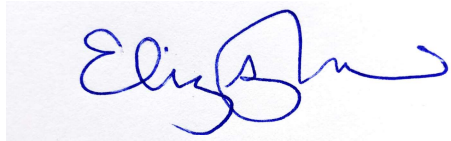
(1) An individual who is ill and presently not able to perform work due to illness.

In order to be eligible for benefits, an individual must be physically able to work. Here, claimant testified that she was too sick to effectively work. Therefore, the administrative law judge

concludes claimant was not able to work the week ending February 13, 2021, due to personal illness. Benefits for that one-week period are withheld.

**DECISION:**

The March 18, 2021 (reference 01) unemployment insurance decision is modified in favor of claimant. Claimant was on a mandatory leave of absence and is eligible for benefits for the two-week period ending January 2, 2021. Claimant was not able to work due to illness and is not eligible for benefits for the one-week period ending February 13, 2021.



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June 14, 2021  
Decision Dated and Mailed

lj/kmj