

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**PATRICIA HULIT**  
Claimant

**MID-STEP SERVICES INC**  
Employer

**APPEAL NO. 22A-UI-03423-JT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/28/21  
Claimant: Appellant (1)**

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Iowa Code Section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

On January 6, 2022, Patricia Hulit (claimant) filed a timely appeal from the December 29, 2021 (reference 01) decision that denied benefits effective November 28, 2021, based on the deputy's conclusion that the claimant was unable to work due to illness. After due notice was issued, a hearing was held on March 4, 2022. Claimant participated. The employer did not comply with the hearing notice instructions to call the designated toll-free number at the time of the hearing and did not participate. Exhibits A through D were received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, and WAGE-A.

**ISSUES:**

Whether the claimant was able to work and available for work since November 28, 2021.  
Whether the employer's account may be charged for benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Patricia Hulit (claimant) established an original claim for benefits that was effective November 28, 2021. Iowa Workforce Development set the weekly benefit amount at \$380.00. Mid-Step Services, Inc. is the sole base period employer. The claimant made weekly claims for each of the nine weeks between November 28, 2021 through January 29, 2022. The weekly claims for the weeks ending December 4, 11 and 18, 2021 were late weekly claims. The claimant reported for each week that she was not working. For the first four weeks, November 28, 2021 through December 25, 2021, the claimant reported that she was not able and/or not available for work. For the remaining weeks, the claimant reported that she was able to work and available for work. For each of the weeks, the claimant reported that she had not refused work. For the first week of the claim, the claimant reported \$714.00 in wages.

The claimant has at all relevant times been employed by Mid-Step Services, Inc. as a full-time Residential Living Assistant. The work involves assisting adults with disabilities in a long-term care facility. The claimant began the employment in September 2020 and last performed work

for the employer on or about November 22, 2021. The claimant has traditionally worked four overnight shifts per week, 32 hours per week, with the work hours being 11:00 p.m. to 7:00 a.m.

On or about November 22, 2021, the claimant became ill with COVID-19. The claimant suffers from asthma, which further aggravated her COVID-19 illness symptoms. The claimant sought COVID-19 testing and then followed up with a nurse practitioner. The claimant was initially bedridden due to the extent of her illness. The nurse practitioner kept the claimant off work through January 24, 2022 in connection with the COVID-19 illness. On December 27, 2021, the nurse practitioner gave the claimant a note indicating the claimant was released to return to work on January 25, 2022.

The claimant did not return to work on January 25, 2022. By that time, the claimant learned that she was pregnant with twins. The nurse practitioner discontinued services. The claimant has been referred to an obstetrician, but has not yet had her first appointment with the obstetrician. The first appointment is set for March 8, 2022. The claimant has remained off work in connection with the pregnancy pending her first appointment with the obstetrician. The claimant understands her pregnancy to be a high-risk pregnancy, given that she is pregnant with twins.

The employer has had the claimant's regular duties available since the claimant commenced her approved leave of absence in connection with the COVID-19 illness. The employer continues to have work available for the claimant. The claimant has provided a note from the employer that indicates the employer has work available for the claimant when she is released to return to work.

#### **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) and (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.

(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.

...

(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(1), (10) and (35) 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.

...

(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.

...

(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.

If a claimant individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. Iowa Code section 96.7(2)(a)(2)(a).

The claimant has not met the able and available requirements since she established the November 28, 2021 original claim. From the time the claim went into effect until January 25, 2022, the claimant was on an approved leave of absence due to illness, was under the care of a medical provider, and had not been released to return to work. Though the claimant was released to return to work effective January 25, 2022 in connection with the COVID-19 issue, the claimant has voluntarily remained on a leave of absence in connection with her pregnancy, pending her March 8, 2022 first visit with the obstetrician. Benefits are denied effective November 28, 2021. The able and available disqualification continued at the time of the hearing, despite the absence of weekly claims for the period beyond January 29, 2022. The able and available disqualification will continue until the claimant is released to return to full-time employment. The claimant must meet all other eligibility requirements.

**DECISION:**

The December 29, 2021 (reference 01) decision is affirmed. The claimant has not met the able and available requirements since she established the November 28, 2021 original claim. Benefits are denied effective November 28, 2021. The able and available disqualification continued at the time of the hearing, despite the absence of weekly claims for the period beyond January 29, 2022. The able and available disqualification will continue until the claimant is released to return to full-time employment. The claimant must meet all other eligibility requirements.



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James E. Timberland  
Administrative Law Judge

March 23, 2022  
Decision Dated and Mailed

jet/scn