

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LARRYSHA LAWRENCE
Claimant

APPEAL 21A-UI-13176-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEVENTH AVENUE INC
Employer

**OC: 03/14/21
Claimant: Appellant (2R)**

Iowa Code §96.5(2)a-Discharge/Misconduct
Iowa Code §96.5(1)- Voluntary Quit
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.1(113)a- Layoff
Iowa Admin. Code r. 871-24.22(2)- Availability for Work

STATEMENT OF THE CASE:

On May 29, 2021, the claimant/appellant filed an appeal from the May 25, 2021, (reference 03) unemployment insurance decision that disallowed benefits based on claimant voluntarily quitting for compelling personal reasons and the absence was more than ten days. The parties were properly notified about the hearing. A telephone hearing was held on August 9, 2021. Claimant participated personally. Employer participated through Teah Shirk. Exhibits A, B, C, and D were admitted into the record. Administrative notice was taken of claimant's unemployment benefits.

ISSUES:

Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on November 14, 2019. Claimant last worked as a part-time QA Inspector. Claimant was separated from employment on January 24, 2020, when she was laid off from work.

Claimant was hired by the employer to work up to 35 hours per week. Claimant was not guaranteed hours when she was hired but she worked an average of 28 hours per week over the course of the nine weeks she worked for the employer. The employer's business is order volume based so the hours fluctuate each week.

On January 24, 2020, claimant was called by the employer and notified they were putting her on an on-call status. (Exhibit D). The employer hoped it would only be for a couple days but it

continued until June 18, 2020. Around March 15, 2020, claimant called her supervisor, Becky Schmidt, and asked if they had any work available. Ms. Schmidt informed her the employer did not have work available at that time. Claimant filed for unemployment benefits.

On June 18, 2020, the employer called the claimant to offer her hours to work. Claimant did not return the call. On June 19, 2020, the employer sent the claimant a postcard attempting to contact the claimant to return to work. On June 26, 2020, the employer called the claimant to see if she would return to work. The claimant was going to return to work on July 6, 2020, but did not show up. On July 9, 2020, the employer left the claimant a message and sent claimant a postcard about her working. On July 22, 2020, the employer terminated claimant in their system.

Beginning on March 17, 2020, the claimant did not have childcare available for her children. Claimant has not been available to work due to the lack of childcare. Claimant became available for work beginning on July 29, 2021.

Effective October 11, 2020, claimant qualified for Pandemic Unemployment Assistance (PUA).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was laid off due to a lack of work.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Iowa Admin. Code r. 871-24.1(113)a provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

The employer laid the claimant off for lack of work as of January 24, 2020. The claimant's separation was attributable to a lack of work by the employer. Benefits are allowed, provided the claimant is otherwise eligible.

The next issue that needs to be determined is whether the claimant is available for work.

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(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.

Iowa Admin. Code r. 871-24.23 provides:

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

- (8) Where availability for work is unduly limited because of not having made adequate arrangements for child care.

For the reasons that follow, the administrative law judge concludes that the claimant was able to work and available for work from January 24, 2020 through March 16, 2020. Claimant was not available for work March 17, 2020 through July 28, 2021 because she did not have childcare for her children. Claimant is now able to work and available for work effective July 29, 2021.

DECISION:

The representative's May 25, 2021, decision (reference 03) is REVERSED. The claimant was laid off due to a lack of work on January 24, 2020.

The claimant was able to work and available for work from January 24, 2020 through March 16, 2020. Claimant is eligible for state unemployment benefits for this time period if she is otherwise eligible.

Claimant was not available for work March 17, 2020 through July 28, 2021 because she did not have childcare for her children. Claimant is not eligible for state unemployment benefits from March 17, 2020 through July 28, 2021.

Claimant is now able to work and available for work effective July 29, 2021. Benefits are allowed, provided the claimant is otherwise eligible.

REMAND:

The issue of whether claimant qualifies for PUA benefits effective March 17, 2020 is remanded to the Benefits Bureau for an initial investigation and determination. It appears the PUA benefits were effective October 11, 2020, however the claimant testified she did not have childcare beginning March 17, 2020. It should be determined whether the PUA benefits should have actually began March 17, 2020.



Carly Smith
Administrative Law Judge
Unemployment Insurance Appeals Bureau

August 16, 2021
Decision Dated and Mailed

cs/lj