

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**CHEYENNE L DEUTSCHLE**  
Claimant

**APPEAL NO: 19A-UI-08570-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MANN'S OTTUMWA LLC**  
Employer

**OC: 09/29/19**  
**Claimant: Respondent (2)**

Iowa Code section 96.4-3 – Able and Available for Work

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the October 21, 2019, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 22, 2019. The claimant did not respond to the hearing notice and did not participate in the hearing. Bess Long, General Manager, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the claimant is able and available for work.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was hired as a part-time crew member for Mann's Ottumwa (McDonalds) on October 3, 2018. She was placed on a leave of absence after she was charged with conspiracy to deliver marijuana and failure to affix a drug tax stamp, both of which are class D felonies.

The claimant signed for a copy of the handbook which contains a morality clause stating among other things that anyone arrested or charged with a crime will be placed on a leave of absence until a verdict is reached or all charges are dropped. The employer issued the claimant a written warning when it placed her on the leave of absence September 26, 2019, and notified the claimant she needed to maintain contact with the employer but the claimant has not done so. The employer has tried to contact the claimant but her phone number is disconnected.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant is not able and 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(22) 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.

The claimant is on a leave of absence and did not participate in the hearing. She has the burden of proving she is able and available for work. The claimant has not demonstrated that she is able and available for work. Until such time as the claimant reports to the Department that she is able and available for work, benefits must be denied.

#### **DECISION:**

The October 21, 2019, reference 01, decision is reversed. The claimant is not able and available for work. Benefits are denied, until such time as the claimant reports to the Department and demonstrates she is able and available for work.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/scn