

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

TAMMIE A CHURCH
Claimant

WALGREEN CO
Employer

APPEAL NO. 22A-UI-00773-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/31/21
Claimant: Appellant (5)**

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

The claimant, Tammie Church, filed a timely appeal from the December 2, 2021, reference 02, decision that denied benefits effective January 31, 2021, based on the deputy's conclusion that the claimant requested and was granted a leave of absence, was voluntarily unemployed, and was not available for work within the meaning of the law. The administrative law judge notes the reference 02 decision erroneously referenced January 31, 2021 as the issue date. The correct issue date was November 7, 2021, the effective date of the claimant's "additional claim" for benefits. After due notice was issued, a hearing was held on January 31, 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. The hearing in this matter was consolidated with the hearing in Appeal Number 22A-UI-00772-JTT, but the claimant withdrew the appeal in 22A-UI-00772-JTT at the start of the appeal hearing. Exhibit A was received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, and WAGE-C.

ISSUES:

Whether the claimant was able to work and available for work for the period beginning November 7, 2021.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Despite the reference 02 decision that mentioned January 31, 2021 as the issue date, the reference 02 and the present matter were supposed to concern the claimant's ability to work and availability to perform work during the period beginning November 7, 2021. That date was the effective date of an additional claim for benefits. A March 23, 2021, reference 01, decision had addressed the able and available issues for the week of January 31, 2021 through February 6, 2021. See Appeal Number 22A-UI-00772-JTT.

The claimant established an original claim for benefits that was effective January 31, 2021. At that time, the claimant made a weekly claim for the week that ended February 6, 2021 and then

discontinued her claim for benefits in connection with her return to full-time employment with Walgreen Company. The claimant has made no weekly claims since she made the weekly claim for the week that ended February 6, 2021. The claimant continued to work for Walgreen Company as a full-time shift manager until August 6, 2021.

On August 6, the claimant was in a motor vehicle collision in which an airbag deployed. The claimant suffered multiple and extensive injuries in connection with the collision and airbag deployment. These included a severe concussion, back injury, and subsequent related neuropathy in the claimant's hands and feet. Subsequent to the injury event, the claimant was off work for an extended period during which time she used leave under the Family and Medical Leave Act (FMLA) and used a short-term disability benefit available through the Walgreen Company employment. When these benefits ran out, the claimant established an "additional claim for benefits that was effective November 7, 2021.

Prior to establishing the November 7, 2021 additional claim, the claimant's doctor had taken the claimant off work indefinitely in connection with the August 2021 collision and injury. Prior to establishing the November 7, 2021 additional claim, the claimant exhausted available health insurance benefits and had to discontinue treatment. The claimant was recently reauthorized for Medicaid benefits and has a medical appointment set for February 7, 2022. The claimant has not been released by a doctor to return to work.

The claimant advises that she has been physically and mentally unable to work since the August 2021 collision and injury. The claimant suffers from short-term memory loss, is unable to multitask, suffers from neuropathy in her hands that makes it difficult for her to lift and hold objects, and suffers from neuropathy in her feet that makes her unable to stand for extended periods.

Once the claimant established the additional claim for benefits that was effective November 7, 2021, the claimant did not make any weekly claims from that time to the present.

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:

(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.

...

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.

Iowa Admin. Code r. 871-24.23(1) 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.⁴

...

(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.

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

(g). 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 Friday following the weekly reporting period.

The relevant period to be addressed is the period beginning November 7, 2021, not the period beginning January 31, 2021. The claimant has not been able to work or available for work within the meaning of the law since November 7, 2021. First, the claimant has not make any weekly claims since that time and, therefore, cannot be considered for benefits for that period. Second, the claimant has been ill, unable to work, was under the care of a physician who took her off work, and has not been released by a physician to return to any type of work. The

claimant is not eligible for benefits for the period beginning November 7, 2021. Benefits are denied effective November 7, 2021.

DECISION:

The December 2, 2021, reference 02, decision is modified as follows. The relevant period to be addressed is the period beginning November 7, 2021, not the period beginning January 31, 2021. The claimant has not been able to work or available for work within the meaning of the law since November 7, 2021. In addition, the claimant has not make weekly claims since that time and, therefore, cannot be considered for benefits for that period. Benefits are denied effective November 7, 2021.

A handwritten signature in cursive script that reads "James E. Timberland". The signature is written in dark ink on a light-colored background.

James E. Timberland
Administrative Law Judge

February 18, 2022
Decision Dated and Mailed

jet/mh