

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

YELITZA GONZALEZ
Claimant

QPS EMPLOYMENT GROUP INC
Employer

APPEAL 21A-UI-07741-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/16/20
Claimant: Appellant (2-R)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

On March 15, 2021, Yelitza Gonzalez (claimant) filed an appeal from the March 11, 2021, reference 07, unemployment insurance decision that denied benefits effective February 7, 2020, based upon the determination she was not able to and available for work. After due notice was issued, a telephone hearing was held on May 26, 2021. The claimant participated. The employer participated through Rhonda Hefter, Unemployment Manager, and Janine Morazan, Lead Recruiter. Luciana (interpreter number 13437) and Florencia (interpreter number 11097) from CTS Language Link, provided Spanish interpretation for the hearing. No exhibits were offered into the record.

ISSUE:

Was the claimant able to work, available for work, and actively and earnestly seeking work effective February 7, 2021?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was rehired on November 9, 2020, and assigned to work full-time hours with the employer's client Frontier. On or about February 3, 2021, the claimant was required to quarantine because her child had COVID-19. The claimant was tested, and she reported the negative test results to the employer on Tuesday, February 9. The employer contacted the client and learned the claimant's assignment had ended.

On February 10, the employer offered the claimant an assignment with Cole's Quality Foods, which was first shift, the same distance from her previous assignment, and paying \$14.00 an hour. The claimant told the employer that she would let them know later if she could find childcare. The claimant never responded to the employer, but she did have childcare, a family

member who had watched her child when she worked at Frontier. The claimant did not have any other limitations on her ability to or availability for work.

Whether the claimant refused a suitable offer of work has not been investigated or adjudicated by the Benefits Bureau.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was able to and available for work. Benefits are allowed effective February 7, 2021, as long as she meets all other eligibility requirements.

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 provides, in relevant part:

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.

b. Interpretation of ability to work. The law provides that an individual must be able to work to be eligible for benefits. This means that the individual must be physically able to work, not necessarily in the individual's customary occupation, but able to work in some reasonably suitable, comparable, gainful, full-time endeavor, other than self-employment, which is generally available in the labor market in which the individual resides.

(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(8) provides, in relevant part:

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.

An individual claiming benefits has the burden to prove that she is able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. The claimant had childcare and was able to return to work on Tuesday, February 9, meaning she was available the majority of the workweek. She did not have any other limitations on her ability to work effective February 7, 2021. The claimant has established that she was able to and available for work.

As the claimant has established that she was able to and available for work, the issue of whether she refused a suitable offer of work on February 10, as delineated in the findings of fact, is remanded to the Benefits Bureau for a fact-finding interview and unemployment insurance decision to include both parties.

DECISION:

The March 11, 2021, reference 07, unemployment insurance decision is reversed. The claimant is able to work and available for work effective February 7, 2021. Benefits are allowed, provided she is otherwise eligible.

REMAND:

As the claimant has established that she was able to and available for work, the issue of whether she refused a suitable offer of work on February 10, as delineated in the findings of fact, is remanded to the Benefits Bureau for a fact-finding interview and unemployment insurance decision to include both parties.



Stephanie R. Callahan
Administrative Law Judge

June 10, 2021
Decision Dated and Mailed

src/scn