

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SECILY M HANDCOX
Claimant

BROWN DEER PLACE LLC
Employer

APPEAL 21A-UI-15079-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/28/20
Claimant: Appellant (1R)

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Admin. Code r. 871-24.23(10) – Leave of Absence from Work

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the June 28, 2021 (reference 02) unemployment insurance decision that found claimant was not eligible for unemployment benefits effective April 4, 2021 due to her not being able to and available for work and on a voluntary leave of absence from work. The parties were properly notified of the hearing. A telephone hearing was held on August 26, 2021. The claimant participated personally. The employer participated through witness Haley Coohy. Claimant's Exhibits A, B and C were admitted. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUES:

Was the claimant able to and available for work?
Was the claimant on a voluntary leave of absence from work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed beginning August 27, 2018. She worked as a full-time cook at the employer's independent and memory care living facility. Nathan Dance was the claimant's immediate supervisor.

Sometime in February of 2021, one of claimant's residents that she cooked for passed away. The resident's children were going to get rid of her dog but then suggested that the claimant take the dog. The claimant agreed and took the resident's dog. Nick, the supervisor of the facility, learned that the claimant took the dog to her home and notified her that she needed to bring the dog back because it was against employer policies to accept gifts from residents or their families. Claimant returned the dog the next day. During that time, Nick had told the claimant that her house was not a good place to raise a dog. This comment was upsetting to the claimant.

For several years the claimant did not get along with her direct supervisor, Nathan Dance. Claimant told Ms. Coohy that he cussed at her and that she wanted to move to another

department when she had a meeting with Ms. Coohy, Nick, and Mr. Dance about the claimant's violation of the attendance policy. Ms. Coohy told the claimant she would see what other positions were available besides cook.

Claimant was off of work due to illness on March 25, 2021. Claimant notified the employer that she was in the hospital. On March 29, 2021, claimant presented the employer with a medical note that allowed her to return back to work; however, she told Ms. Coohy that she would not return to working with Mr. Dance. Ms. Coohy contacted the claimant on April 6, 2021 and offered her a different full-time job in another department; however, the claimant did not want to work in housekeeping. Claimant never went back to work for the employer because she no longer wanted to work in the kitchen area with Mr. Dance or work in the housekeeping department.

Claimant permanently separated from employment in April of 2021. That separation from employment has not yet been investigated by the Benefits Bureau of Iowa Workforce Development and will be remanded for an initial investigation and determination.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code § 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 § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(1) 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.

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.

Iowa Admin. Code r. 871-24.22(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.

(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) 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.

Iowa Admin. Code r. 871-24.23(10) provides:

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

(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.

Iowa Admin. Code r. 871-24.23(3) provides:

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

(3) If an individual places restrictions on employability as to the wages and type of work that is acceptable and when considering the length of unemployment, such individual has no reasonable expectancy of securing work, such individual will be deemed not to have met the availability requirements of Iowa Code section 96.4(3).

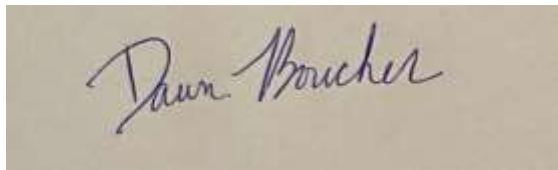
In this case, the claimant was on an unapproved leave of absence from work because she refused to work in the kitchen. Claimant then refused to work in housekeeping, a separate department from the kitchen. Therefore, the claimant was placing restrictions on her availability to work effective April 4, 2021. Benefits are denied effective April 4, 2021 and continuing until the claimant establishes that she was able to and available for full-time work.

DECISION:

The June 28, 2021 (reference 02) unemployment insurance decision is affirmed. The claimant was not able to work or available for work effective April 4, 2021. Unemployment insurance benefits funded by the State of Iowa are denied effective April 4, 2021 and continuing until the claimant establishes that she was able to work and available for full-time work.

REMAND:

The claimant's separation from employment in April of 2021 is remanded to the Benefits Bureau for an initial investigation and determination.

A rectangular box containing a handwritten signature in blue ink that reads "Dawn Boucher".

Dawn Boucher
Administrative Law Judge

August 31, 2021
Decision Dated and Mailed

db/ol