

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

---

**KIMBERLY A SCALLON**  
Claimant

**KIDQUEST**  
Employer

**APPEAL NO. 21R-UI-04700-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/15/20**  
**Claimant: Appellant (1)**

---

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

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated September 29, 2020 reference 02, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on April 9, 2021. Claimant participated personally. Employer participated by attorney David Kuehner and witnesses Kayleen Tierney and Michael Janssen.

**ISSUE:**

Whether claimant is able and available for work?

Whether claimant is on an approved leave of absence?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant worked as a full time director for employer. Claimant last worked in the daycare center building on January 27, 2020. Claimant last worked for employer from her home on March 4, 2020. Claimant had been allowed by employer to work from home from the period of February 11 through March 4, 2020 as claimant had injured her foot in a non work-related injury. On March 4 claimant stated that her doctor said she was not to work at all. Claimant did not give employer a doctor's note to this effect. Claimant stayed off work throughout March until March 27 when claimant produced a doctor's note saying that claimant should quarantine as she had symptoms consistent with Covid. Claimant was never tested for Covid.

Claimant stated that she was not able and available for work until May 1, 2020. Claimant did not provide any medical documentation in support of when she was able to return to work without restriction.

**REASONING AND CONCLUSIONS OF LAW:**

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 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 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.

Iowa Admin. Code r. 871-24.23(35) provides:

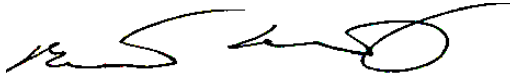
Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(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.

Claimant was off from work for the last few months of her employment from injuries and illnesses that were not work-related. Employer allowed claimant to work from home until such time that claimant's doctor indicated claimant could not work at all. Inasmuch as the injury and illness were not work-related and the treating physician has not released the claimant to return to work, the claimant has not established the ability to work. Benefits are withheld until such time as the claimant obtains a full medical release to return to work.

**DECISION:**

The decision of the representative dated September 29, 2020, reference 02 is affirmed. Claimant is not eligible to receive unemployment insurance benefits, effective March 15, 2020. Claimant shall be eligible once she has shown she is able and available for work and provided claimant meets all other eligibility requirements.



---

Blair A. Bennett  
Administrative Law Judge

April 14, 2021  
Decision Dated and Mailed

bab/scn