

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LYNA R KAIN
Claimant

EMCO ENTERPRISES LLC
Employer

APPEAL NO. 21A-UI-23094-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 07/25/21
Claimant: Appellant (1)**

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

The claimant, Lyna Kain, filed a timely appeal from the October 5, 2021, reference 06, decision that denied benefits for the period beginning July 25, 2021, based on the deputy's conclusion that the claimant was unable to work due to illness. After due notice was issued, a hearing was held on November 29, 2021. Claimant participated. Anthony Scott represented the employer and presented testimony through Kerri Peterson. The hearing in this matter was consolidated with the hearing in Appeal Number 21A-UI-23008-JTT. The administrative law judge took official notice of the following Agency administrative records: KCCO and DBRO. Though the employer is a party to both appeal numbers and Talx/Equifax is the employer representative of record in both appeal matters, Mr. Scott, who contracts with Equifax to provide services as a hearing representative asserted he only represented the employer on 21A-23008-JTT. In light of that assertion, the administrative law judge also allowed Ms. Peterson, the employer witness, the opportunity to question the claimant, but Ms. Peterson declined.

ISSUE:

Whether the claimant was able to work and available for work for the period beginning July 25, 2021.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant established an original claim for benefits that was effective July 25, 2021. The claimant made weekly claims for each of the weeks between July 25, 2021 and October 16, 2021. The claimant then got frustrated with the unemployment insurance process and discontinued her weekly claims. The claimant provides inconsistent information regarding whether she engaged a work search during the period when she was making weekly claims. When the claimant made her weekly reports, the claimant reported that she made two job contacts per week, except for the week that ended September 18, 2021, for which the claimant reported one job contact. The claimant initially testified that she has not looked for work. The claimant then amended her testimony. The claimant did not keep an actual work search log. The claimant advises that she threw away the record of employer contacts. The claimant recalls contacting Flying J about a cashiering position during the last week of July. The claimant

asserts that she also applied at a couple of Git-n-Go convenience stores, at a storm door company, at Dollar General, at McDonald's, at Firestone, at Aerotek, and at one other business, but cannot provide dates of the alleged employer contacts.

The claimant's most recent employer is EMCO Enterprises, L.L.C. The claimant began employment with EMCO on May 19, 2021 and last performed work for EMCO on June 18, 2021. The work with EMCO was full-time. The claimant's work hours were 4:00 p.m. to 12:30 p.m. Monday through Friday. On June 18, 2021, the claimant left work early for health reasons. The claimant called in absences due to illness for each work day through July 13, 2021. The claimant then discontinued contact with EMCO.

The claimant advises she has suffered three aneurisms and was hallucinating at the time she went off work on June 18, 2021. The claimant went to an urgent care clinic and was directed to contact her primary care physician. The next day, the claimant went to an emergency room and was again directed to contact a primary care physician. At some point in June 2021, the claimant went under the care of a doctor or the equivalent. The claimant saw the provider on a weekly basis and then on a biweekly basis. The doctor prescribed psychotropic medications. The provider never released the claimant to return to work. The claimant discontinued seeing the doctor after she received a decision that denied unemployment insurance benefits. The claimant states she needs to return to the provider for a refill of her medication, but that the provider has conditioned the refill on the claimant meeting with a counselor.

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(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) 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.

...

(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.

The weight of the evidence establishes the claimant has not met the able and available requirements since July 25, 2021. The claimant left her most recent employment due to a significant and ongoing mental health issue. The claimant was under the care of a health care provider for an extended period and has not been released to return to work. The weight of the evidence also fails to establish an active and earnest search for new employment. Benefits are denied effective July 25, 2021. The able and available disqualification is ongoing, until the claimant demonstrates that she is physically and mentally able to work, that she has been released to work, and that she had engaged in an active and earnest search for new employment. The claimant must meet all other eligibility requirements.

The absence of weekly claims for the period beginning October 17, 2021, means the claimant cannot be considered for benefits for that period. See Iowa Administrative Code rule 871-24.2.(1)(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).

DECISION:

The October 5, 2021, reference 06, is affirmed. The claimant has not been able and available for work since establishing her claim for benefits. Benefits are denied effective July 25, 2021. The able and available disqualification is ongoing, until the claimant demonstrates that she is physically and mentally able to work, that she has been released to work, and that she had engaged in an active and earnest search for new employment. The claimant must meet all other eligibility requirements.

A rectangular box containing a handwritten signature in cursive script that reads "James E. Timberland".

James E. Timberland
Administrative Law Judge

January 4, 2022
Decision Dated and Mailed

jet/mh