

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANGELA S KREMER
Claimant

KWIK TRIP INC
Employer

APPEAL 21A-UI-16490-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/02/21
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

On July 28, 2021, claimant Angela S. Kremer filed an appeal from the July 21, 2021 (reference 01) unemployment insurance decision that denied benefits based on a determination that claimant was on a leave of absence effective May 2, 2021, and was unavailable for work. The parties were properly notified of the hearing. A telephonic hearing was held at 9:00 a.m. on Friday, September 17, 2021. The claimant, Angela S. Kremer, participated. The employer, Kwik Trip, Inc., participated through Fawn Anderson, Store Leader. Claimant's Exhibit A was received and admitted into the record without objection. The administrative law judge took official notice of the administrative record.

ISSUE:

Is the claimant able to work and available for work?
Is the claimant on an approved leave of absence?

FINDINGS OF FACT:

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

Claimant began employment with Kwik Trip, Inc., in February 2019. Throughout her employment, claimant worked part-time hours for the employer as a cashier. Claimant was notified on August 29, 2020, that her employment had ended effective July 6, 2020.

Claimant was no longer working for the employer when she refiled for unemployment insurance benefits in a second benefit year with an effective date of May 2, 2021. At that point, claimant was physically able to work and available to accept work. Claimant has applied for numerous jobs and participated in multiple job interviews. She is now gainfully employed.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is able to work and available for work. Benefits are allowed, provided she is otherwise eligible.

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. 871-24.23(10) provides:

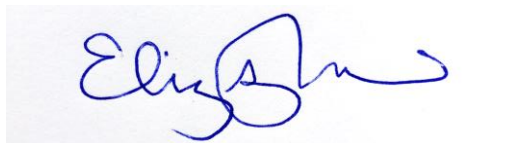
Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(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.

In this case, claimant was not employed with employer Kwik Trip, Inc., effective May 2, 2021. She was not on a leave of absence at that time. Therefore, benefits cannot be denied or withheld on that basis.

DECISION:

The July 21, 2021 (reference 01) unemployment insurance decision is reversed. Claimant was able to and available for work effective May 2, 2021. Benefits are allowed, provided claimant is otherwise eligible.



Elizabeth A. Johnson
Administrative Law Judge
Unemployment Insurance Appeals Bureau

September 23, 2021
Decision Dated and Mailed

lj/mh