

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LOVETEE KIYEE
Claimant

TPI IOWA LLC
Employer

APPEAL NO. 21A-UI-07211-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/22/20
Claimant: Appeal (1R)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

The claimant, Lovetee Kiyee, filed a timely appeal from the March 2, 2021, reference 01, decision that denied benefits for the period of November 22, 2020 through January 2, 2021, based on the deputy's conclusion that that claimant was not able to perform work during that period. After due notice was issued, a hearing was held on May 19, 2021. Claimant participated. Danielle Williams, Senior Human Resources Coordinator, represented the employer. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, NMRO, and WAGE-A.

ISSUES:

Whether the claimant was able to work and available for work during the period of November 22, 2020 through January 2, 2021.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed by TPI as a full-time employee in the finishing area. The claimant was assigned to the 6:00 p.m. to 6:00 a.m. shift. The number of scheduled shifts varied from week to week. The claimant started the employment in 2016. The claimant last performed work for the employer on December 1, 2020.

On August 24, 2020, the claimant gave birth by Caesarian section. After three weeks, the claimant returned to the doctor for a follow up appointment and the doctor released the claimant to return to work. The claimant remained on maternity leave until she returned to work on November 9, 2020. The claimant continued to experience pain in the area affected by the Caesarian delivery of her baby.

On December 3, 2020, the claimant learned that her roommate had tested positive for COVID-19. In November 2020, the claimant had commenced feeling some symptoms that were consistent with COVID-19. The claimant experienced the chills, whole-body achiness, sore throat, coughing, and loss of appetite. The claimant did not get tested for COVID-19, but concluded on December 3, 2020 that she likely had COVID-19. The employer has a policy that

requires an employee whose household member tests positive for COVID-19 to follow the health care provider's guidance regarding quarantining for up to two weeks. On December 3, 2020, the claimant notified the employer of her roommate's positive test. The employer told the claimant that she had to remain off work for two weeks. Two weeks from December 3, 2020 was Thursday, December 17, 2020. An employer representative periodically checked in with the claimant during the two-week quarantine period.

The claimant did not feel well enough to return to work on December 17, 2020 and did not return to work at that time. The claimant did not feel well enough to return to work until December 28, 2020. Ongoing pain associated with the Caesarian section delivery was part of the reason the claimant did not feel well enough to return to work prior to December 28, 2020. On December 24, 2020, the employer called and left a voicemail message for the claimant. The claimant was still ill and quarantining at the time. On December 24, 2020, the employer asserted that the claimant had been a no-call/no-show for work.

The claimant attempted to return to work on December 28, 2020, but was turned away at that time. The claimant asserts the employer told her everyone had been sent home for that day due to the weather. The claimant also asserts a defect in the employer's badge access system that prevented her from being able to gain access to the workplace. The claimant did not report for the remainder of that week.

On December 30, 2020, a human resources representative sent the claimant a certified letter. The letter stated that the claimant has been absent since December 1, 2020. The letter asserted that the claimant had not maintained consistent contact with the employer. The letter asserted that the claimant had not followed guidance from the employer and that the claimant had been unresponsive to the employer's attempts since December 21, 2020 to reach the claimant to discuss her absences and her intentions regarding return to work. The letter stated that the claimant's absence for the period beginning December 28, 2020 was unexcused. The letter directed the claimant to return to work no later than January 2, 2021 and/or to provide documentation in support of her continued absence. The letter stated that that the claimant's employment would be terminated effective January 3, 2021, if the claimant failed to comply. The letter was not delivered to the claimant until January 4, 2021.

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), (23) and (29) 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.

...

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

...

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

The issue before the administrative law judge is whether the claimant was able to work and available for work during the period of November 22, 2020 through January 2, 2021. The weight of the evidence establishes that the claimant was worked during the week of November 22-28, 2020 with the exception of Thursday, Thanksgiving. Because the claimant was working that week, the claimant cannot be deemed unemployed that week and would not meet the availability requirement. The claimant is not eligible for benefits for the week that ended November 28, 2020. The weight of the evidence establishes that the claimant was unable to work and unavailable for work due to illness during the majority of the week that ended December 5, 2020 and through the benefit week that ended December 26, 2020. The claimant is not eligible for benefits for the weeks between November 29, 2020 and December 26, 2020. The weight of the evidence establishes that the claimant was not available for work during the week that ended January 2, 2021. Though the claimant was turned away on Monday, November 28, 2020 due to inclement weather that does not explain why the claimant did not report to work for the remainder of the week. The claimant provided internally contradictory testimony regarding that week. The weight of the evidence establishes that the employer had work for the claimant during the majority of the week that ended January 2, 2021. The claimant is not eligible for benefits for the week that ended January 2, 2021.

This matter will be remanded to the Benefits Bureau for a decision concerning the claimant's separation from the employment on or about December 28, 2020.

DECISION:

The March 2, 2021, reference 01, decision is modified as follows. The claimant was not available for work within the meaning of the law during the period of November 22, 2020 through January 2, 2021 and is not eligible for benefits for that period.

This matter is **remanded** to the Benefits Bureau for a decision concerning the claimant's separation from the employment on or about December 28, 2020.



James E. Timberland
Administrative Law Judge

May 27, 2021
Decision Dated and Mailed

jet/ol

NOTE TO CLAIMANT: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are unemployed or continue to be unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits that you must repay.

ATTENTION: On May 11, 2021, Governor Reynolds announced that Iowa will end its participation in federal pandemic-related unemployment benefit programs effective June 12, 2021. The last payable week for PUA in Iowa will be the week ending June 12, 2021. Additional information can be found in the press release at <https://www.iowaworkforcedevelopment.gov/iowa-end-participation-federal-unemployment-benefit-programs-citing-strong-labor-market-and>.