

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**TERESA L KENNETT**  
Claimant

**PREMIER ESTATES 504 LLC**  
Employer

**APPEAL 20A-UI-09581-JC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/15/20**  
**Claimant: Appellant (4)**

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

**STATEMENT OF THE CASE:**

The claimant/appellant, Teresa L. Kennett, filed an appeal from the August 10, 2020 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits and stated she was ineligible for benefits due to a requested leave of absence. The parties were properly notified about the hearing. A telephone hearing was held on September 25, 2020. The claimant participated personally. The employer, Premier Estates 504 LLC, did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing.

The administrative law judge took official notice of the administrative records. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Is the claimant able to work and available for work effective March 15, 2020?  
Is the claimant voluntarily unemployed due to a requested leave of absence?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began work in 2016 and works for this employer on a full-time basis as an LPN.

Claimant filed her claim for unemployment insurance benefits with an effective date of March 15, 2020. From March 15-March 31, 2020, claimant was absent from work due to illness. Her doctor released her to return to work effective April 1, 2020, without restrictions.

When claimant notified employer she had been released to return to work without restrictions, employer told claimant her position had been temporarily filled by a temp worker, and when the contract ran out, claimant could return to her old position. Claimant was able to and available for work effective April 1, 2020, even though she was not scheduled full-time. She did not refuse any offers of work.

## 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. 871-24.23(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. 24.22(2) provides:

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.

j. Leave of absence. A leave of absence negotiated *with the consent of both parties*, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) *If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.*

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

(emphasis added).

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.

For an unemployed individual to be eligible to receive benefits, she must be able to work, available for work, and actively seeking work as required by the unemployment insurance law. Iowa Code § 96.4(3). The burden is on the claimant to establish that she is able and available for work within the meaning of the statute. Iowa Code § 96.6(2); Iowa Admin. Code r. 871-24.22.

For the period of March 15-31, 2020: Claimant was unable to perform work due to illness. She therefore, was not able to and available for work, according to Iowa law. Therefore, the claimant is not eligible for regular, state-funded unemployment insurance benefits March 15-31, 2020.

Effective April 1, 2020: Claimant is able to and available for work. Claimant was released without restrictions and able and available for work. Employer did not have work available for claimant. Benefits are allowed, effective April 1, 2020, provided she is otherwise eligible.

*Note to Claimant:* This decision denies benefits March 15-31, 2020. *If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of 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 currently 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>.

**DECISION:**

The August 10, 2020 (reference 01) initial decision is modified in favor of the claimant/appellant. The claimant was not able and available for work March 15-31, 2020. Benefits are denied for this period. Effective April 1, 2020, the claimant is able and available for work. Benefits are allowed, provided she is otherwise eligible.



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Jennifer L. Beckman  
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September 28, 2020

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Decision Dated and Mailed

jlb/sam