

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JANE LUTTRELL
Claimant

ZEB SMOKEHOUSE LTD
Employer

APPEAL 21A-UI-14630-ED-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

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

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 June 24, 2021, the claimant, Jane Luttrell, filed an appeal from the June 14, 2021 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was unable to work due to a voluntary leave of absence. The parties were properly notified of the hearing. A telephonic hearing was held on August 23, 2021. The claimant, Jane Luttrell, participated. The employer, Zeb Smokehouse Ltd, participated through Zeb Schuelke. The administrative law judge took official notice of the administrative record.

ISSUES:

Effective March 15, 2021, was the claimant able to and available for work?
Effective March 15, 2021, was the claimant on a voluntary leave of absence?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant worked for employer as a part-time packager and waitress until March 8, 2020.

During the week of March 8, 2020, claimant became concerned about the COVID-19 virus. Claimant discussed her concern with the employer. The two came to a mutual decision that claimant would take time off work so she would not be exposed to COVID-19. Claimant has not returned to work as of the hearing date. Claimant was 71 years old at the time of hearing. Claimant was awarded Pandemic Unemployment Assistance (PUA benefits) and has exhausted those benefits. Claimant is no longer employed with the employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was not able to and available for work. Benefits are denied.

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.

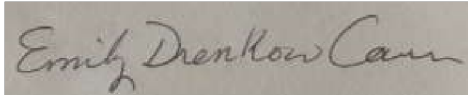
Here, claimant was on an approved leave of absence beginning March 8, 2020. Claimant did request a leave of absence during these weeks; the employer agreed to allow the claimant to go on a leave of absence. Because it was the claimant's choice that she was placed on a leave of absence and not a mandatory leave of absence, the administrative law judge finds that claimant was on a voluntary leave of absence. Claimant was not able to and available for work. Benefits are denied.

DECISION:

The June 14, 2021 (reference 01) unemployment insurance decision is reversed. Claimant was not able to work and available for work effective March 8, 2020. Benefits are denied.

REMAND:

The issue of the reason for the separation from employment is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.



Emily Drenkow Carr
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

August 31, 2021

Decision Dated and Mailed

ed/kmj