

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

IVORY HEITMEIER
Claimant

WEST LIBERTY FOODS LLC
Employer

APPEAL 21A-UI-23614-SN-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/22/21
Claimant: Appellant (2)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The claimant, Ivory Heitmeier, filed an appeal from the October 11, 2021, (reference 01) unemployment insurance decision that denied benefits based upon the conclusion she was not able to and available for work for the August 22, 2021. After due notice was issued, a telephone conference hearing was scheduled to be held on December 14, 2021. The claimant participated. The employer participated through Human Resources Supervisor Monica Dyar.

ISSUE:

Was the claimant able to work, available for work effective August 22, 2021?

FINDINGS OF FACT:

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

The claimant started working as a full-time slice technician for the employer on February 21, 2011. In August 2021, the claimant's rate of pay was \$18.82.

The employer has a Covid19 mitigation practice that instructs employees who test positive for Covid19 to quarantine for 10 days after a positive test result.

On August 19, 2021, the claimant tested positive for Covid19. The employer sent her home per its Covid19 mitigation practice. The only symptom the claimant experienced was that she lost her sense of smell. The claimant would have been able to perform her duties given this sole symptom. Work would have been available for the claimant if she had not fallen within the Covid19 mitigation practice parameters.

On August 30, 2021, the claimant returned to work her regular schedule.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not able to work and available for work effective August 22, 2021.

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(1)a 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.

(1) *Able to work.* An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. *Illness, injury or pregnancy.* Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

Iowa Admin. Code r. 871-24.23 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.

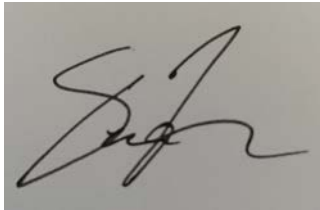
(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

An individual claiming benefits has the burden of proof that she is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

The claimant did not request a leave of absence. The employer forced her to take a 10-day quarantine. The administrative law judge believes the closer question is whether the claimant was disqualified for being ill during the time of the quarantine. The administrative law judge also finds this provision to be inapplicable because it states the claimant must be ill and must be unable to perform her work due to illness. The only symptom the claimant experienced was a loss of smell. This sense is not necessary for her to perform her job functions. As a result, the claimant was able and available for work effective August 22, 2021. Benefits are granted.

DECISION:

The October 11, 2021, (reference 01) unemployment insurance decision is reversed. The claimant was able to work and available for work effective August 22, 2021. Benefits are granted.



Sean M. Nelson
Administrative Law Judge
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January 18, 2022
Decision Dated and Mailed

smn/scn