

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JANET HEILMAN
Claimant

MANPOWER INTERNATIONAL INC
Employer

APPEAL 21A-UI-02696-SN-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/04/20
Claimant: Appellant (1)

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:

The claimant filed an appeal from the January 4, 2021, (reference 02) unemployment insurance decision that denied benefits based upon the conclusion she requested and was granted a leave of absence. The parties were properly notified of the hearing. A telephone hearing was held on March 10, 2020. The claimant participated. The employer did not participate. Exhibit A was admitted into the record. The administrative law judge took official notice of the agency records.

ISSUE:

Was the claimant able to work and available for work effective October 4, 2020?

FINDINGS OF FACT:

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

The claimant, Janet Heilman, was hired as a part-time parts room clerk for the employer, Manpower International Inc, on February 25, 2020. The claimant's rate of pay is \$18.50 per hour. The claimant's immediate supervisor is Corey Gaugnon.

The employer has a Covid19 spread mitigation practice that requires an employee who has been exposed to Covid19 report this exposure to management and the Human Resources Department immediately. The employee is then instructed to remain home for at least two weeks from the date of exposure.

On October 6, 2020, the claimant tested positive for Covid19. The claimant provided a copy of her Covid-19 test. (Exhibit A)

On October 7, 2020, the claimant reported she tested positive for Covid19 to Mr. Gaugnon. Mr. Gaugnon asked the claimant screening questions regarding her symptoms and the test.

On October 8, 2020, the claimant received a call from the employer's Human Resources Department. They instructed her to remain away from the employer's worksite for 14 days with a

return date on October 21, 2020. Prior to her return date, the claimant asked the employer's Human Resources Department if they would like her to return on October 22, 2020 or if she should just wait to return on the following Monday, October 26, 2020. The employer's Human Resources Department said she could wait to return on October 26, 2020.

The claimant returned to work on October 26, 2020.

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 October 4, 2020.

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. 871-24.22(2) provides:

Benefit 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 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.

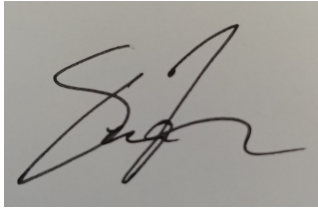
An individual claiming unemployment insurance benefits has the burden of proof that she is able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

For the initial period, the claimant did not request a leave of absence. The claimant remained away from work in order to comply with the employer's Covid19 spread mitigation practice from October 6, 2020 to October 21, 2020. However, the claimant was positive for Covid19. While the claimant may have been asymptomatic, she was almost certainly contagious during the quarantine period, such that she could not perform her work due to Covid19 until October 21, 2020. As such, she is disqualified under Iowa Admin. Code r. 871-24.23(1).

Prior to the end of her quarantine period, the claimant asked the employer's Human Resources Department if she could return the following Monday, October 26, 2020. The employer's Human Resources Department granted the request. The claimant is disqualified for this additional period because she requested a leave of absence that was granted. Benefits are denied.

DECISION:

The January 4, 2021, (reference 02) unemployment insurance decision is affirmed. The claimant was not able to work and available for work effective October 4, 2020. Benefits are denied.



Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

March 15, 2021
Decision Dated and Mailed

smn/kmj

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 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>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.