

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TARA J BRODIGAN
Claimant

KWIK TRIP INC
Employer

APPEAL 21A-UI-08888-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 02/14/21
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:

On March 29, 2021, the claimant, Tara J. Brodigan, filed an appeal from the March 26, 2021 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was on an approved leave of absence and was unavailable for work. The parties were properly notified of the hearing. A telephonic hearing was commenced at 9:00 a.m. on June 14, 2021, and was continued to 9:00 a.m. on July 14, 2021. The claimant, Tara J. Brodigan, participated. The employer, Kwik Trip, Inc., participated through Emily Speropulos, HR Employment Specialist. Claimant's Exhibits 1, 2, and 3 were received and admitted into the record.

ISSUE:

Is the claimant able to work and available for work?
Is the claimant on an approved leave of absence?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began employment with employer Kwik Trip, Inc., on December 5, 2018. Claimant's most recent position with the company is a part-time guest service co-worker. Claimant is currently employed with the employer in this capacity.

Claimant was off work for multiple weeks, between February 4, 2021, and March 23, 2021, due to a serious medical condition. Claimant had E. coli in her system and experienced stage one kidney failure. She was in significant pain for approximately five weeks that made it difficult for her to move. Claimant submitted FMLA paperwork to the employer requesting a leave of absence, and the employer granted this request.

When claimant had improved, she spoke with the employer, completed and submitted the necessary return-to-work paperwork, and returned to work. Throughout claimant's medically-required absence, the employer had work available for her.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was on an approved leave of absence and was not available for work. Benefits are withheld.

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.

Iowa Admin. Code r. 871-24.23(1) provides:

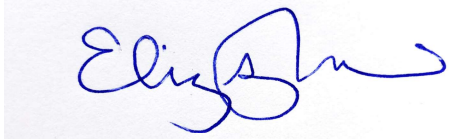
Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

Here, the evidence in the record establishes that claimant requested and was granted a leave of absence so she could attend to her serious medical condition. This was a period of voluntary unemployment, and claimant is not eligible for unemployment insurance benefits.

DECISION:

The March 26, 2021 (reference 01) unemployment insurance decision is affirmed. Claimant requested and was granted a leave of absence, and she was not available for work. Benefits are withheld.



Elizabeth A. Johnson
Administrative Law Judge
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July 22, 2021
Decision Dated and Mailed

lj/kmj