

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS  
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

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**SUSAN NELSON**

Claimant

**APPEAL 22A-UI-13056-LJ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEYS MARKETING COMPANY**

Employer

**OC: 04/24/22**

**Claimant: Respondent (2)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work

**STATEMENT OF THE CASE:**

On May 25, 2022, employer Casey's Marketing Company filed an appeal from the May 26, 2022 (reference 02) unemployment insurance decision that allowed benefits based on a determination that claimant had established her ability to and availability for work. The parties were properly notified of the hearing. A telephonic hearing was held at 1:00 p.m. on Thursday, July 14, 2022. Appeal numbers 22A-UI-13055-LJ-T and 22A-UI-13056-LJ-T were heard together and created one record. The claimant, Susan Nelson, did not appear and did not participate in the hearing. The employer, Casey's Marketing Company, participated through Jolynn Sinram, District Manager. The administrative law judge took official notice of the administrative record.

**ISSUE:**

Has there been a separation from employment?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for the employer on October 8, 2021. She worked full-time hours for the employer as a shift lead.

On April 22, claimant became upset after a coworker made an inappropriate comment to her. She reported the comment to Sinram on April 24 and said, "I think I am just going to be done." Sinram assured claimant she would investigate the situation and address it appropriately. Claimant then said she would reconsider her decision to quit. She took some time away from work to think about her employment decision while Sinram looked into the incident that occurred.

Claimant then took a weeklong vacation during the week of May 1 through May 7. She went out of state to visit her daughter, who was giving birth. Claimant was scheduled to return to work after this vacation. Sinram recalled that claimant did not immediately return. As of May 14, the date the employer submitted its fact-finding response to Iowa Workforce Development, claimant remained a full-time employee with the employer.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not able to and available for work effective April 24, 2022.

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 section 96.1A, subsection 37", paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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(2) 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.

(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(10), (25), and (29) provide:

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.

(25) If the claimant is out of town for personal reasons for the major portion of the workweek and is not in the labor market.

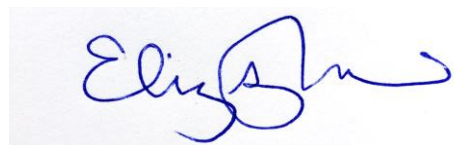
(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

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.

In this case, the claimant was effectively on a leave of absence for the one-week period ending April 30, 2022. She was not working any hours for her regular employer, considering whether she wanted to continue her employment. During the following week, the one-week period ending May 7, 2022, claimant was out of town on a personal vacation and was removed from the labor market. Claimant continued on as an employee with this employer, and Sinram presented unrefuted testimony that the employer had work available for her. The claimant has not met her burden of establishing she was able to and available for work. Accordingly, benefits must be withheld.

**DECISION:**

The May 26, 2022 (reference 02) unemployment insurance decision is reversed. Claimant was not able to and available for work effective April 24, 2022. Benefits must be withheld.



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Elizabeth A. Johnson  
Administrative Law Judge

August 16, 2022  
Decision Dated and Mailed

lj/lj

**APPEAL RIGHTS.** If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://eab.iowa.gov)**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

**AN APPEAL TO THE BOARD SHALL STATE CLEARLY:**

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Note to Parties:** YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

**Note to Claimant:** It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**DERECHOS DE APELACIÓN.** Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board  
4th Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
En línea: [eab.iowa.gov](http://eab.iowa.gov)**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

**UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:**

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Nota para las partes:** USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

**Nota para el reclamante:** es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

**SERVICIO DE INFORMACIÓN:**

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.