

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MONIQUE M SMITH
Claimant

GRAPETREE MEDICAL STAFFING INC
Employer

APPEAL 22A-UI-06803-S2-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/13/22
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(10) – Able & Available – Availability Disqualifications

STATEMENT OF THE CASE:

On March 18, 2022, the claimant filed an appeal from the March 11, 2022, (reference 01) unemployment insurance decision that denied benefits based on a determination that claimant was on an approved leave of absence. The parties were properly notified about the hearing. A telephone hearing was held on April 27, 2022. Claimant Monique M. Smith participated. Employer Grapetree Medical Staffing, Inc. did not participate. Claimant's Exhibit A was received. Official notice was taken of the administrative record.

ISSUES:

Is the claimant able to and available for work?
Is 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 began working for employer in May or June 2020. Claimant works for employer as a part-time certified nursing assistant (CNA). In November 2021, claimant underwent knee surgery. Claimant's doctor informed her the recovery could take up to nine months. Claimant's position as a CNA required her to bend, kneel, and stand for long period of time, and she did not believe she would be able to perform her job duties until her full recovery. Prior to her surgery, she requested a leave of absence from employer. Employer granted her request, but noted it typically allowed a maximum of six months for a leave of absence. Employer told claimant they could discuss an extension if she was still unable to return to work at six months.

Claimant received a note from her doctor in late March 2022, which notes she is able to perform her work duties as tolerated. Claimant stated she physically cannot yet perform the CNA job duties because her knee is still recovering. She provided the note to her employer, but they have not yet connected to discuss her return to work.

Claimant's ability to and availability for work during the prior claim year (effective date January 24, 2021, and reopened September 12, 2021) was addressed in a decision dated October 14, 2021 (reference 04).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work effective February 13, 2022.

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:

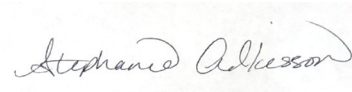
Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(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 a leave of absence due to recovery from knee surgery. Claimant has not established she is able to and available for work, because she voluntarily became unemployed after requesting and being granted a leave of absence. Therefore, claimant is not eligible for regular, state-funded unemployment insurance benefits from the effective date of the claim.

DECISION:

The March 11, 2022, (reference 01) unemployment insurance decision is affirmed. The claimant is not available for work effective February 13, 2022, and regular, state-funded unemployment insurance benefits are denied.



Stephanie Adkisson
Administrative Law Judge
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May 10, 2022
Decision Dated and Mailed

sa/scn