

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

PAMELA J NELSON
Claimant

CASEY'S MARKETING COMPANY
Employer

APPEAL 21A-UI-15309-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Able 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 June 23, 2021 (reference 01) unemployment insurance decision that denied benefits to the claimant based on a leave of absence from work. The parties were properly notified about the hearing. An appeal hearing was held on August 30, 2021 following due notice. Claimant participated personally. The employer did not participate. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

ISSUES:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant worked for the employer beginning in July of 2012 as a part-time cashier. When the COVID-19 public health emergency first occurred, she told her manager that she did not feel comfortable working because of her underlying health condition which made her more susceptible to serious complications if she contracted COVID-19. Claimant's last day physically worked on the job was March 25, 2020. She has not worked since that date. Claimant has been looking for other work; however, she has not been applying for jobs because the specific job requirements must be the correct fit for her. At some point, the employer notified her that it believed she had retired from her position; however, she did not retire.

REASONING AND CONCLUSIONS OF LAW:

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", subparagraph (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) 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.

b. Interpretation of ability to work. The law provides that an individual must be able to work to be eligible for benefits. This means that the individual must be physically able to work, not necessarily in the individual's customary occupation, but able to work in some reasonably suitable, comparable, gainful, full-time endeavor, other than self-employment, which is generally available in the labor market in which the individual resides.

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) 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(3) provides:

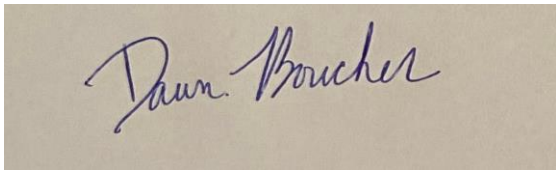
Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(3) If an individual places restrictions on employability as to the wages and type of work that is acceptable and when considering the length of unemployment, such individual has no reasonable expectancy of securing work, such individual will be deemed not to have met the availability requirements of Iowa Code section 96.4(3).

The burden is on the claimant to establish that she is able to work and available for work within the meaning of the statute. Iowa Code § 96.6(2); Iowa Admin. Code r. 871-24.22. The claimant was not working initially due to her requesting a leave of absence from work. The claimant is currently not work as she is restricting her availability on employability as to the type of work she is willing to accept. As such, the claimant has failed to establish that she was able to and available for work pursuant to Iowa law. Benefits are denied effective March 29, 2020 and continuing until she is able to and available for work.

DECISION:

The June 23, 2021 (reference 01) unemployment insurance decision is affirmed. The claimant was on a voluntary leave of absence and was not able to work and available for work effective March 29, 2020. Unemployment insurance benefits funded by the State of Iowa are denied effective March 29, 2020 and continuing until such time claimant is able to and available for work.



Dawn Boucher
Administrative Law Judge

September 3, 2021
Decision Dated and Mailed

db/mh