

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

PATRICE GREEN
Claimant

EJG MANAGEMENT LLC
Employer

APPEAL 22A-UI-03331-JD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/12/21
Claimant: Appellant (1R)**

Iowa Code § 96.4(3) – Able and Available Iowa Code
Iowa Code § 96.19(38) – Total and Partial Unemployment
Iowa Code § 96.7(2)A(2) – Partial Benefits
Iowa Admin. Code r. 871-24.23(26) – Same Hours and Wages

STATEMENT OF THE CASE:

On January 18, 2022, the claimant filed an appeal from the January 12, 2022, (reference 02) unemployment insurance decision that denied benefits based on a determination that the claimant was not able to or available for work. The parties were properly notified about the hearing. A telephone hearing was held on March 3, 2022. Claimant, Patrice Green, participated and testified. Employer participated through Sally Anderson, Operations Manager. The administrative law judge took official notice of the administrative record.

ISSUE:

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on July 24, 2021. Claimant last worked as a full-time crew member. Claimant's last day worked December 10, 2021. The claimant was separated on January 12, 2022, after the IWD Fact-Finding telephone interview. Prior to this interview the claimant was still employed by the employer just not working any hours. The claimant stated during the fact-finding phone interview that she no longer wanted to continue working for the employer. The claimant ceased all contact with the employer after December 10, 2021, despite filing continued claims for unemployment. The employer stated that due to the claimant's attendance issues she would be issued a one-week suspension from her job but that continued work was available for her.

The claimant's separation from EJG Management Co., has not been determined by the Benefits Bureau of IWD.

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 for the period in question.

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 96.19, 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(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.

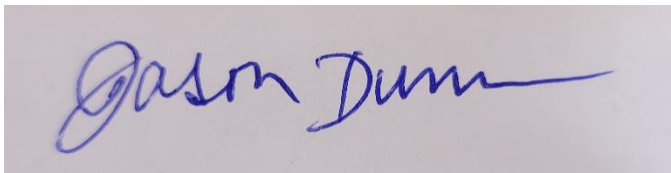
The claimant has not been in contact with her employer since December 10, 2021, her last day worked. Her inability to remain in contact with her employer to determine if there were hours available is intentional and she is deemed not able to or available for work. The claimant's continued claims for unemployment benefits is troubling based on her own testimony that she failed to remain in contact with her employer after December 10, 2021, and that information should be germane to the separation that is being remanded to benefits for investigation and determination. Benefits are denied effective December 10, 2021, due to the claimant not making herself available for work.

DECISION:

The January 12, 2021, (reference 02) unemployment insurance decision is affirmed. The claimant is not able to work and available for work effective December 10, 2021. Benefits are denied.

REMAND:

The claimant's subsequent separation from her employment is remanded to the Benefits Bureau at IWD for an investigation and determination. The Benefits Bureau may incorporate any findings of fact delineated above, if necessary and helpful, in making their determination.



Jason Dunn
Administrative Law Judge
Unemployment Insurance Appeals Bureau
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March 22, 2022
Decision Dated and Mailed

jd/mh