

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SHELLY L HARDY
Claimant

SIEMENS WIND POWER INC
Employer

APPEAL NO. 22A-UI-02807-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 02/28/21
Claimant: Appellant (2)**

Iowa Admin. Code ch. 871 r. 24.23(10) – Leave of Absence
Iowa Code § 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated January 3, 2022 reference 02, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on February 25, 2022. Claimant participated personally. Employer failed to respond to the hearing notice and did not participate.

ISSUES:

Whether claimant is able and available for work?

Whether claimant is on an approved leave of absence?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant works as a full time administrative coordinator for employer. On or around November 30, 2021 claimant found out that her husband had a fever. Claimant reported this to her employer. Her employer had claimant tested for Covid. The test came back negative.

Employer was going on a two-week plant shutdown, where employees were not coming in. Salaried workers (of which claimant was one) were to come into work to do cleaning tasks and the like. Claimant was originally told to work from home for two weeks, in spite of the negative test. Then, when the plant was shut down, claimant was told to simply file for unemployment.

Claimant was tested again prior to her return to work, and again claimant tested negative. At all times relevant, claimant was able and available for work.

REASONING AND CONCLUSIONS OF LAW:

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 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. 871-24.22(1)a 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.

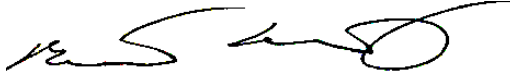
(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

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.

The claimant has established the ability to work at all times relevant in this matter. Employer chose to lay off claimant for a short period of time during which claimant filed for unemployment. Benefits shall be allowed for the period of November 28, 2021 through December 18, 2021.

DECISION:

The decision of the representative dated January 3, 2022, reference 02 is reversed. Claimant is eligible to receive unemployment insurance benefits, effective November 28, 2021, provided claimant meets all other eligibility requirements.



Blair A. Bennett
Administrative Law Judge

March 28, 2022
Decision Dated and Mailed

bab/scn