

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**DARLA J STILLIONS**  
Claimant

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**APPEAL 21A-UI-00675-AW-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/26/20**  
**Claimant: Appellant (4)**

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

**STATEMENT OF THE CASE:**

Claimant filed an appeal from the December 2, 2020 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on February 10, 2021, at 3:00 p.m. Claimant participated. Jon Anthes was a witness for claimant. Claimant's Exhibit A was admitted.

**ISSUE:**

Whether claimant is able to and available for work.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time, year-round Cafeteria Supervisor with Aramark. Claimant worked at Mount Mercy University. The last day claimant performed work for employer was March 12, 2020. After spring break, the university began online classes. As a result, claimant was furloughed. Claimant used her paid time off and vacation until late April 2020. Claimant filed an initial claim for benefits effective April 26, 2020.

On July 22, 2020, claimant had surgery for lung cancer. Claimant was released on July 26, 2020. Claimant was required to complete four chemotherapy sessions, which were three to four weeks apart. Claimant was not ill and was able to perform her job duties while completing her chemotherapy treatments. Claimant had no other barriers to employment since filing her initial claim.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was able to and available for work since filing her initial claim, except for the week ending July 25, 2020, due to her hospitalization. Benefits are allowed provided claimant is otherwise eligible from April 26, 2020, until July 18, 2020, and effective July 26, 2020.

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), (2) provide, in pertinent part:

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.

(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(2) provides:

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

(2) An individual presently in the hospital is deemed not to meet the availability requirements of Iowa Code section 96.4(2) and benefits will be denied until a change in status and the individual can meet the eligibility requirements. Such individual must renew the claim at once if unemployed.

An individual claiming benefits has the burden of proof that she be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

Claimant was hospitalized from July 22, 2020 until July 26, 2020; claimant was not available for work during that time. For all other periods of time since claimant filed her initial claim, claimant

has not had any barriers to employment. Claimant was not ill. Claimant was not restricted from working by her physician. Claimant was able to and available for work from April 26, 2020, until July 18, 2020, and effective July 26, 2020. Benefits are allowed for that time provided claimant is otherwise eligible.

**DECISION:**

The December 2, 2020 (reference 01) unemployment insurance decision is modified in favor of appellant. Claimant was not available for work from July 22, 2020 through July 26, 2020. Benefits are denied for the week ending July 25, 2020. Claimant was able to and available for work from April 26, 2020, until July 18, 2020, and effective July 26, 2020. Benefits are allowed for that time period provided claimant is otherwise eligible.



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February 25, 2021  
Decision Dated and Mailed

acw/lj