

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**REBECCA A SPENCER**  
Claimant

**DIVERSIFIED SERVICES FOR INDUSTRY**  
Employer

**APPEAL NO. 22A-UI-04885-JT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/02/22**  
**Claimant: Appellant (5)**

Iowa Code Section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

On February 12, 2022, Rebecca Spencer (claimant) filed a timely appeal from the February 7, 2022 (reference 02) decision that denied benefits for the period beginning January 2, 2022, based on the deputy's conclusion that the claimant requested and was granted a leave of absence, was voluntarily unemployed and was not available for work. After due notice was issued, a hearing was held on March 31, 2022. Claimant participated. Myranda Schipporeit represented the employer. Exhibit A, the online appeal, was received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, and WAGE-A.

**ISSUES:**

Whether the claimant was able to work and available for work during the period of January 2, 2022 through February 5, 2022.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant, Rebecca Spencer, established an original claim for benefits that was effective January 2, 2022. Iowa Workforce Development set the weekly benefit amount at \$265.00. The claimant made weekly claims for each of the five weeks between January 2, 2022 and February 5, 2022.

At the time the claimant established her original claim for benefits, the claimant was employed by Diversified Services for Industry and was assigned to work at a 3M facility in Forest City, Iowa. The claimant's usual work days were Monday through Friday. The claimant's shift would start at 5:00 a.m. or 6:00 a.m. and would end at 2:00 p.m. or 3:00 p.m. Though the employer characterizes the employment as part-time, the claimant usually worked full-time hours and the employment was full-time. The claimant's wage was \$17.00 an hour.

The claimant established her original claim for unemployment insurance benefits in response to going off work due to COVID-19 related issues. Before the claimant went off work from her

regular duties, she completed an eight-hour shift on January 3, 2022. On January 3, 2022, the employer notified the claimant that a coworker had tested positive for COVID-19. The employer inquired whether the claimant has been in contact with the coworker for 20 minutes or longer. The claimant advised she had worked in the presence of the coworker for 20 minutes or longer. The employer told the claimant the claimant would have to go off work, would need to submit to COVID-19 testing, and would need to receive prior approval before returning to work. The employer made plans to get an at-home COVID-19 test kit to the claimant. The claimant was able to access an at-home COVID-19 test and tested positive. The claimant promptly notified the employer of the positive test result on January 3, 2022. At that time, the employer told the claimant that 3M policy required that the claimant be away from the 3M facility for 10 days.

When the claimant inquired about compensation for her time off work, the employer provided the claimant with remote administrative work for the week that ended January 8, 2022. The claimant worked a total of 29 hours during the week that ended January 8, 2022, for which the claimant earned \$493.00.

Throughout the benefit week that ended January 15, 2022, the claimant was ill and unable to work. The claimant experienced symptoms consistent with COVID-19. These included hot flashes, fever, cough, fatigue, body aches, including painful muscles and joints. On January 16, 2022, the claimant finally felt well enough to venture to the grocery store.

On Monday, January 17, 2022, the claimant return to work and recommenced working full-time hours. The claimant continued to work full-time hours and earned full-time wages through the benefit week that ended February 5, 2022.

## **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", 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.

Iowa Admin. Code r. 871-24.23(1), (10) and (23) provides:

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

(1) An individual who is ill and presently not able to perform work due to illness.

...

(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.

...

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

Iowa Code section 96.1A(37) provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

If a claimant individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. Iowa Code section 96.7(2)(a)(2)(a).

The claimant did not request a leave of absence.

During the week that ended January 8, 2022, the claimant was able to work and available for work within the meaning of the law. Despite having the be away from the facility after completing one shift that week, the claimant continued to feel well enough to perform remote work that week and ended up working 29 hours, the majority of that week. However, because the claimant's wages for that week exceeded her weekly benefit amount by more than \$15.00, the claimant cannot be deemed partially unemployed that week and, therefore, is not eligible for unemployment insurance benefits for that week.

During the week that ended January 15, 2022, the claimant was unable to work due to illness and unavailable for work. The claimant is not eligible for benefits for the week that ended January 15, 2022.

During the three weeks between January 16, 2022 and February 5, 2022, the claimant was back at work full-time and therefore did not meet the unemployment insurance "availability" requirement and was neither temporarily or partially unemployed. The claimant is not eligible benefits for those weeks.

**DECISION:**

The February 7, 2022 (reference 02) decision is MODIFIED as follows. The claimant is not eligible for benefits for the five weeks between January 2, 2022 and February 5, 2022. During the week that ended January 8, 2022, the claimant was able to work, available for work, but not partially unemployed within the meaning of the law. During the week that ended January 15, 2022, the claimant was unable to work due to illness and unavailable for work. During the three weeks between January 16, 2022 and February 5, 2022, the claimant was back at work full-time, did not meet the unemployment insurance "availability" requirement, and was neither temporarily or partially unemployed.



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James E. Timberland  
Administrative Law Judge

April 7, 2022  
Decision Dated and Mailed

jet/mh