

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ERICA E HESTON
Claimant

LEXINGTON SQUARE LLC
Employer

APPEAL 21A-UI-02580-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/22/20
Claimant: Appellant (4R)

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

STATEMENT OF THE CASE:

On January 4, 2021, the claimant, Erica E. Heston, filed an appeal from the December 29, 2020 (reference 03) unemployment insurance decision that denied benefits based upon a determination that claimant was not able to and available for work effective October 4, 2020. The parties were properly notified of the hearing. A telephonic hearing was held on March 8, 2021. The claimant, Erica Heston, participated and was represented by attorney Michelle Swanstron. The employer, Lexington Square, L.L.C., participated through Ashley Ruffcorn, Director of Human Resources; and Lisa Hanson, Administrator; and attorney Kacy Flaherty-Tarpey represented the employer. Employer Lexington Square, L.L.C., offered Exhibits 1 through 5 into the record. However, these exhibits had not yet reached claimant Erica Heston, and claimant had not been able to share them with her attorney. Additionally, none of the exhibits appeared relevant to the issue before the administrative law judge. Therefore, they were not admitted into the record. The administrative law judge took official notice of the administrative record.

ISSUE:

Is claimant Erica Heston able to and available for work effective October 4, 2020?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time, most recently as an EMT, beginning January 6, 2020. The issue of whether claimant has separated from this employer is the subject of the February 9, 2021 (reference 04) decision. That decision determined that claimant was discharged from employment for no disqualifying reason. The employer has not appealed that decision. The employer contends that on the date claimant maintains she was discharged, it offered her work and she has not responded to that offer.

As of October 4, 2020, claimant was pregnant and looking for employment. Claimant was applying for work as a receptionist, an EMT, and a cashier. At the time, her then-only child was in school and daycare was not an issue.

Claimant gave birth to a daughter on October 26, 2020. She took twelve weeks of leave after giving birth. Each week she filed her weekly claim, she reported that she was not able to and available for work, as she was taking maternity leave.

Effective January 10, 2021, claimant resumed her search for work. She was working with Promise Jobs and they were helping her fill out applications. Claimant was physically able to work and was available for work, were an employer to offer her a job.

Claimant had carpal tunnel surgery on Thursday, March 4, 2021. She testified that she will be unable to work for two weeks. She is scheduled to have her stitches removed on March 17, 2021. At that point, her surgeon will evaluate her condition and clear her to resume all normal activities.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant Erica Heston was able to work from October 4, 2020, through October 24, 2020; and from January 10, 2021, through March 6, 2021. Claimant was unable to work and unavailable for work from October 25, 2020, through January 9, 2021, due to her maternity leave.

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.

Iowa Admin. Code r. 871-24.23(35) provides:

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

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

In order to be eligible for benefits, an individual claiming benefits must be able to work, available for work, and actively and earnestly seeking work. In this case, claimant Erica Heston has presented unrefuted testimony that she was able to work and available for work from October 4, 2020, until the date she gave birth, October 24. Claimant took twelve weeks of maternity leave and properly reported that she was not available for work during those twelve weeks. She then resumed an active and earnest work search effective January 10, 2021, and began reporting that she was able to and available for work once again. Claimant has been able to and available for work from January 10 until March 4, at which point she had carpal tunnel surgery. From that point forward, claimant is not able to work until she presents a doctor's note clearing her to resume working as normal.

The issue of whether claimant has refused an offer of work from the employer is remanded to the Benefits Bureau for investigation.

DECISION:

The December 29, 2020 (reference 03) unemployment insurance decision is MODIFIED in favor of claimant Erica E. Heston. Claimant able to work from October 4, 2020, through October 24, 2020. Claimant was unable to work and unavailable for work from October 25, 2020, through January 9, 2021. Claimant was able to work from January 10, 2021, through March 6, 2021. Claimant is unable to work from March 7, 2021, until such time as she obtains and presents to Iowa Workforce Development a medical release to return to work which she is capable of performing given her education, training, and work experience.

REMAND:

The issue of whether claimant Erica E. Heston has refused a suitable offer of work from employer Lexington Square, L.L.C., is remanded to the Benefits Bureau of Iowa Workforce Development for initial investigation and determination.



Elizabeth A. Johnson
Administrative Law Judge
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March 11, 2021
Decision Dated and Mailed

lj/scn