

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KATHY A BERNING
Claimant

ARAMARK CORPORATION
Employer

APPEAL NO. 20A-UI-09877-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/26/20
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 August 11, 2020 reference 01, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on October 2, 2020. Claimant participated personally. Employer participated by Laura McNamer.

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 is employed as a full time kitchen worker for employer. On February 4, 2020 claimant asked for and received time off from work for foot surgery and recovery. Claimant was released to return to work with no restrictions on May 4, 2020.

Claimant presented employer with this release on May 4, 2020. Employer stated that they had no work available for claimant as the large percentage of white collar workers in the building where claimant worked were now working from home. Claimant was able and available to work and no longer on a leave of absence since this date, but employer has not had work for claimant.

Claimant has worked a few days since May 4, 2020 and has reported earnings for each of the days when she has worked.

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.

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

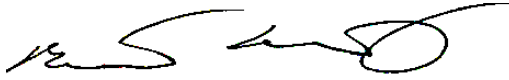
Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(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.

Inasmuch as the treating physician has released the claimant to return to work without restrictions as of May 4, 2020, the claimant has established the ability to work since that date. Benefits shall be allowed effective May 4, 2020.

DECISION:

The decision of the representative dated August 11, 2020, reference 01 is reversed. Claimant is eligible to receive unemployment insurance benefits, effective May 4, 2020, provided claimant meets all other eligibility requirements.



Blair A. Bennett
Administrative Law Judge

October 5, 2020
Decision Dated and Mailed

bab/scn