

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LINDA R LUMLEY
Claimant

A TO Z DRYING INC
Employer

APPEAL 21A-UI-15436-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/21/21
Claimant: Appellant (1R)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.1A(37) – Total and Partial Unemployment

STATEMENT OF THE CASE:

On July 9, 2021, claimant Linda R. Lumley filed an appeal from the July 6, 2021 (reference 01) unemployment insurance decision that determined claimant was not available for work as she was still employed at the same hours and wages as contemplated in her contract of hire. The parties were properly notified of the hearing. A telephonic hearing was held at 2:00 p.m. on Tuesday, August 31, 2021. The claimant, Linda R. Lumley, participated. The employer, A to Z Drying, Inc., participated through Katie Penfold, Senior Manager. No exhibits were offered or admitted into the record. The administrative law judge took official notice of the administrative record.

ISSUE:

Is the claimant totally or partially unemployed effective March 21, 2021?
Is the claimant able to work and available for work effective March 21, 2021?

FINDINGS OF FACT:

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

Claimant was employed part time with A to Z Drying, Inc., most recently as a production line worker, from August 14, 2018 until August 16, 2021, when she separated from employment. This separation has not yet been adjudicated by Iowa Workforce Development.

Claimant opened a claim for unemployment insurance benefits effective March 21, 2021, after battling symptoms of COVID-19 for several months. Claimant was initially exposed to the virus at Christmastime and remained under her medical provider's care for months afterward. Claimant explained her medical provider did not want her returning to work and exposing herself to the chemicals in the work environment. The employer had work available for the claimant, had the claimant been able to return to work.

Claimant only filed weekly continued claims for benefits for two weeks: the week ending May 1, 2021; and the week ending May 8, 2021. Claimant explained that she had difficulty with filing her claim, which may have contributed to this.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was not able to work effective March 21, 2021. Benefits are withheld.

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(1) 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.

...

(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) and (35) provide:

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.

...

(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 unemployment insurance benefits, an individual must demonstrate that she is physically able to work. Here, claimant provided unrefuted testimony that she was not physically able to work or cleared by her doctor to return to her job with A to Z Drying, Inc. She opened her claim for benefits in order to supplement her social security benefits and make up for the income she lost by not being able to work. As claimant has not demonstrated that she is physically able to work, benefits must be withheld.

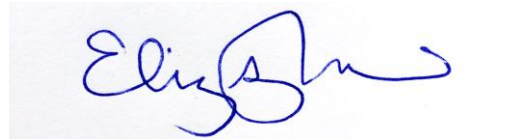
This matter will be remanded for evaluation of claimant's separation from employment.

DECISION:

The July 6, 2021 (reference 01) unemployment insurance decision is affirmed. Claimant was not able to work due to illness. Benefits are withheld.

REMAND:

The issue of whether claimant is eligible for benefits based on her separation from employment with employer A to Z Drying, Inc., is remanded to the Benefits Bureau for a fact-finding interview and determination.



Elizabeth A. Johnson
Administrative Law Judge

September 7, 2021
Decision Dated and Mailed

lj/mh