

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building, 4TH Floor
Des Moines, Iowa 50319
eab.iowa.gov**

REGINA D ANDREWS

Claimant

and

DEE ZEE INC

Employer

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HEARING NUMBER: 22B-UI-05886

**EMPLOYMENT APPEAL BOARD
DECISION**

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.4-3 24.23-10

DECISION

UNEMPLOYMENT BENEFITS ARE DENIED

The Employer appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

Claimant's first day of employment was February 8, 2016. Claimant is still employed by employer as a full-time Department Supervisor. On Monday, January 17, 2022 claimant contacted her supervisor to report she was not feeling well. Her supervisor directed her to take a COVID-19 test. Claimant did so and tested positive. As a result the Claimant did not work the remainder of the week pursuant to the Employer's COVID-19 policies which were consistent with the applicable CDC guidelines. Claimant had a cough. She filed a claim for benefits solely in the week ending January 22, 2022.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.4(3) (2022) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds:

The individual is able to work, is available for work, and is earnestly and actively seeking work....

871 IAC 24.22 expounds on this:

871—24.22 Benefit 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.

24.22(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.

b. Interpretation of ability to work. The law provides that an individual must be able to work to be eligible for benefits. This means that the individual must be physically able to work, not necessarily in the individual's customary occupation, but able to work in some reasonably suitable, comparable, gainful, full-time endeavor, other than self-employment, which is generally available in the labor market in which the individual resides.

The reasons that can render an individual no longer available to work include:

24.23(1) An individual who is ill and presently not able to perform work due to illness.

...

24.23(6) If an individual has a medical report on file submitted by a physician, stating such individual is not presently able to work

....

24.23(34) Where the claimant is not able to work due to personal injury.

24.23(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.

871 IAC 24.23. The burden is on the claimant to establish that she is able and available for work within the meaning of the statute. Iowa Code §96.6(2); 871 IAC 24.22; *Davoren v. Iowa Employment Sec. Comm'n*, 277 N.W.2d 602, 603 (Iowa 1979).

“An evaluation of an individual’s ability to work for the purposes of determining that individual’s eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides.” *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 723 (Iowa 1993). We recognize that a claimant need not be able to work where there is a temporary layoff of a week if for an emergency. This claimant was not placed on layoff due to an emergency, but rather due to her then existing health condition. Such a claimant must still be available to work, even if she still wants to come to work. An example makes this obvious. Suppose a claimant suffers a muscle strain that prevents her from *safely* doing the lifting that is part of her job. Suppose she comes to work says she will likely injure herself if she does work but is willing to give it a try. Would she get benefits if she is sent home just because she was willing to risk it? Of course not. And this does not change merely because she was willing to injure herself, and claims that the time off work was “involuntary.” The fact is that is not a layoff of any sort because fundamentally it is not a period of time off work initiated by the Employer. The same holds here. The Claimant was not capable of doing the work safely. In short, “the Employment Security Law is not designed to provide health and disability insurance...” *White v. EAB*, 487 N.W.2d 342, 345 (Iowa 1992); *see also Hedges v. Iowa Dep’t of Job Serv.*, 368 N.W.2d 862, 867 (Iowa Ct. App. 1985)(disqualifying on voluntary quit theory even though “Ms. Hedges appeared willing to violate her physician's orders, but the V.A. refused to allow her return...”).

Now apparently the Petitioner argues she was willing to come to work with active COVID, but her employer wouldn’t go there. But, of course, either one is available for work, or one is not. The fact that you are unhappy about being unavailable doesn’t change the fact that you are unavailable. The question is whether the State of Iowa should hold that a worker should be paid unemployment benefits because she was willing, but not allowed, to expose people at the job site to active COVID. Such an argument is contrary to sound policy and law. That this is contrary to public policy is obvious. The law is equally clear: “An individual who is ill and presently not able to perform work due to illness” is not available for work. 871 IAC 24.23(6). “Able” here of course anticipates that the duties can be performed *safely*.

We also note that the former federal benefit known as “Pandemic Unemployment Assistance” was only payable for periods when a worker is not able to collect state benefits. CARES Act, §2102(a)(3)(A)(i)(ff). The PUA benefit was payable if “the individual is unable to reach the place of employment because the individual has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.” CARES Act, §2102(a)(3)(A)(ii)(I)(ff). Also those diagnosed with COVID-19 or experiencing symptoms consistent with COVID-19 and off work for that reason were able to get PUA. *Id.* at §2102(a)(3)(A)(ii)(I)(aa). Thus the CARES Act was intended to pay benefits to folks on quarantine, or experiencing symptoms, or who tested positive, precisely because those people would **not** otherwise be able to collect unemployment. This benefit has ended now. But if the Petitioner’s position were the law there

would never have been a need for these key provisions of the CARES Act. Further, the Petitioner would have it that people on off work for these reasons should have gotten benefits charged to Iowa employers instead of the federal PUA charged to the federal government. This is contrary to basic principles of unemployment compensation, and to the entire purpose having had the CARES Act in the first place. Benefits for the week in question are denied.

DECISION:

The administrative law judge's decision dated April 19, 2022 is **REVERSED**. The Employment Appeal Board concludes that the claimant was not able and available for the week ending January 22, 2022. Accordingly, she is denied benefits for that week.

The Board remands this matter to the Iowa Workforce Development Center, Benefits Bureau, for a calculation of the overpayment amount based on this decision.

James M. Strohman

Ashley R. Koopmans

Myron R. Linn

RRA/fnv