

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANGIE KILLEN
Claimant

GOOD SAMARITAN SOCIETY INC
Employer

APPEAL NO: 20A-UI-08354-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/03/20
Claimant: Appellant (1R)

871 IAC 24.23(10) – Leave of Absence
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 13, 2020, reference 01 decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 27, 2020. The claimant participated in the hearing. The employer did not respond to the hearing notice and did not participate in the hearing.

ISSUE:

The issue is whether the claimant was able and available for work and whether she was on a leave of absence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was hired as a full-time CNA/CMA working 10:00 a.m. to 10:00 p.m. for Good Samaritan Society October 7, 2014. She requested and was granted a leave of absence February 21, 2020, because she was suffering from severe depression and anxiety. The claimant was on FMLA from February 21 to May 20, 2020, and was then on general medical leave. In April 2020 the employer posted a position as door screener taking the temperature of individuals trying to enter the facility and the claimant applied for that job but the employer wanted the claimant to remain on the floor. On July 27, 2020, the claimant's medical providers determined she could return to working 10:00 a.m. to 6:00 p.m. for a few weeks instead of her previous 10:00 a.m. to 10:00 p.m. shift while she acclimated to returning to work. The employer told her she could not return to her previous position and the claimant resigned effective August 3, 2020 after securing another position with Manor Care in West Des Moines.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not able and available for work and did take a leave of absence.

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. 871.24.23(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.

The claimant requested and was given a leave of absence to recover from her medical conditions. She was on FMLA until May 20, 2020, and on a medical leave of absence following that. A claimant is not considered able and available for work while on a leave of absence and must be able and available for work in order to be eligible for unemployment insurance benefits. Accordingly, benefits must be denied.

There are issues regarding the claimant separation from this employer that have not yet been heard or adjudicated by the Benefits Bureau.

DECISION:

The July 13, 2020, reference 01, decision is affirmed. The claimant was not able and available for work and did take a leave of absence from February 21, 2020 to August 3, 2020. The claimant is not able to work and available for work effective May 3, 2020. Benefits are withheld until such time as the claimant makes herself available for work to the extent she was available during the base period history and the employer and the employer has no comparable or suitable work available.

REMAND:

The issue of the claimant's separation from this employer is remanded to the Benefits Bureau for an initial determination and adjudication.



Julie Elder
Administrative Law Judge

August 31, 2020
Decision Dated and Mailed

je/mh

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.