

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRIANNA M VOSBERG
Claimant

APPEAL 21A-UI-05286-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SASS.ILLY ENDEAVORS INC
Employer

**OC: 11/15/20
Claimant: Respondent (2R)**

Iowa Code § 96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

The employer/appellant filed an appeal from the February 11, 2021 (reference 01) unemployment insurance decision that found claimant was eligible for unemployment benefits effective November 15, 2020 due to a short-term layoff. The parties were properly notified of the hearing. A telephone hearing was held on April 21, 2021. The claimant did not participate. The employer participated through witness Rhonda Martineez. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUE:

Was the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a part-time caregiver. She began working for the employer on October 1, 2020 and her employment ended on November 30, 2020.

On November 5, 2020, the claimant notified the employer she tested positive for COVID-19 and she was off of work due to the illness and so that she could quarantine. After 14 days, the employer notified the claimant that she was put back on the schedule and she did not show for her scheduled shift. The employer reached out to the claimant about whether she was returning to work and claimant told the employer that she was still ill. The employer touched base with the claimant the following week about coming back to work and the claimant reported that she was still ill and that she did not like the job and would not be returning. The employer had continuing work available for the claimant and there was no lay off due to lack of work.

The issue of whether the claimant's separation from employment was disqualifying has not been adjudicated by the Benefits Bureau of Iowa Workforce Development. That issue will be remanded for an initial investigation and determination.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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 § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 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.

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.

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.

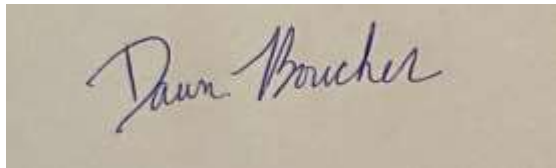
The claimant advised the employer that she continued to be sick and was unable to work. Claimant's illness began on or about November 5, 2020. No layoff due to lack of work occurred as the employer continued to have work available to the claimant. As such, the claimant has failed to establish that she was able to and available for work. Benefits are denied effective November 15, 2020 and continuing until the claimant is able to and available for work.

DECISION:

The February 11, 2021 (reference 01) unemployment insurance decision is reversed. The claimant was not able to work or available for work effective November 15, 2020. Benefits are denied effective November 15, 2020 and continuing until the claimant becomes able to and available for work.

REMAND:

The issue of whether the claimant's separation from employment with this employer is disqualifying is remanded to the Benefits Bureau for an initial investigation and determination.

A handwritten signature in blue ink that reads "Dawn Boucher". The signature is written in a cursive style and is positioned above a horizontal line.

Dawn Boucher
Administrative Law Judge

April 26, 2021
Decision Dated and Mailed

db/ol

Note to Claimant

- This decision determines you are not eligible for regular unemployment insurance benefits funded by the State of Iowa under state law. 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.
- If you do not qualify for regular unemployment insurance benefits funded by the State of Iowa under state law, you may qualify for benefits under the Federal Pandemic Unemployment Assistance (“PUA”) section of the Coronavirus Aid, Relief, and Economic Security Act (“Cares Act”) that discusses eligibility for claimants who are unemployed due to the Coronavirus.
- You will need to apply for PUA to determine your eligibility under the program. For additional information on how to apply for PUA go to:
<https://www.iowaworkforcedevelopment.gov/pua-information>.
- If you are denied regular unemployment insurance benefits funded by the State of Iowa and wish to apply for PUA, please visit:
<https://www.iowaworkforcedevelopment.gov/pua-information> and scroll down to “Submit Proof Here.” You will fill out the questionnaire regarding the reason you are not working and upload a picture or copy of your fact-finding decision. Your claim will be reviewed for PUA eligibility. If you are eligible for PUA, you will also be eligible for Federal Pandemic Unemployment Compensation (FPUC) until the program expires. Back payments PUA benefits may automatically be used to repay any overpayment of state benefits. If this does not occur on your claim, you may repay any overpayment by visiting:
<https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment-and-recovery>.
- If you have applied and have been approved for PUA benefits, this decision will **not** negatively affect your entitlement to PUA benefits.