

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SHARON R BELL
Claimant

DES MOINES IND COMMUNITY SCH DIST
Employer

APPEAL 21A-UI-12296-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/31/20
Claimant: Appellant (2)

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Admin. Code r. 871-24.23(10) – Leave of Absence

STATEMENT OF THE CASE:

A decision was entered in appeal 21A-UI-00711-CL-T which found claimant did not have reasonable assurance of returning to work the following academic year or term until July 23, 2020. The decision allowed benefits from May 31, 2020 through July 23, 2020 provided the claimant was otherwise eligible. The decision also remanded the issue of whether claimant is able to and available for work May 31, 2020 through July 23, 2020 to the benefits bureau for an initial determination. On May 11, 2021, the claimant/appellant filed an appeal from the May 3, 2021, (reference 02) unemployment insurance decision that disallowed benefits based on claimant requesting a leave of absence and not available for work. The parties were properly notified about the hearing. A telephone hearing was held on July 29, 2021. Claimant participated through non-attorney representative Urasaline (Rossi) Frith. Employer participated through Rhonda Wagoner. Employer called Lashone Mosely as a witness. Exhibits A, B, C, D, E, F, G, H, I, J, K were admitted into the record.

ISSUES:

Is the claimant able to work and available for work effective May 31, 2020 through July 23, 2020?

Is the claimant voluntarily unemployed due to a requested leave of absence?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant is an academic year bus driver that drives the bus full time during the school year. On or about May 29, 2020, the employer emailed claimant asking her if she wanted to be put on the list to drive the bus for sporting activities. The hours were not a set schedule and the amount of hours were not guaranteed. Signing up as an activities bus driver was voluntary and not part of her academic year contract. Claimant declined to volunteer for these bus duties due to her concern about COVID-19 and her health conditions. Claimant has high blood pressure and is borderline diabetic. Claimant was concerned she was putting herself at a higher risk being around lots of people on a bus. Claimant was not under any physician's orders not to work.

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)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.

(emphasis added).

To be able to work, "[a]n 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." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871-24.22(1). "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* at 723.

Iowa Admin. Code r. 24.22(2) provides:

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.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

(3) The period or term of a leave of absence may be extended, *but only if there is evidence that both parties have voluntarily agreed.*

There is was no evidence presented the claimant requested to be on a leave of absence from her position as an academic year driver. Claimant declined to work as an activities bus driver because of her concern with COVID-19 and this is not mandatory under her employment contract. The administrative law judge finds claimant was not on a leave of absence.

Next it must be determined whether claimant was able to work and available for work. 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); Iowa Admin. Code r. 871-24.22. Claimant testified she was not under a physician's order that limited her ability to work. Claimant only has to prove that she is **physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation.** (See Iowa Admin. Code r. 871-24.22(1)). The claimant testified she was able to and willing to work in other positions. The claimant also testified that she watched her grandchildren during this time period but if she had a job opportunity should would have went to work. Claimant has met her burden of proof establishing she was able to work and available for work. As such, benefits are allowed effective May 30, 2020 through the week-ending July 25, 2020, provided claimant is otherwise eligible.

DECISION:

The May 3, 2021, (reference 02) unemployment insurance decision is reversed. The claimant was able to and available for full-time work effective May 30, 2020, through the benefit week-ending July 25, 2020, and benefits are allowed for that period, provided the claimant is otherwise eligible.

A handwritten signature in black ink that reads "Carly Smith". The signature is fluid and cursive, with the first name "Carly" and last name "Smith" clearly distinguishable.

Carly Smith
Administrative Law Judge
Unemployment Insurance Appeals Bureau

August 4, 2021
Decision Dated and Mailed

cs/kmj