

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ERICA E HESTON
Claimant

LEXINGTON SQUARE LLC
Employer

APPEAL 20A-UI-09778-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/22/20
Claimant: Appellant (2R)

Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

On August 17, 2020, the claimant filed an appeal from the August 14, 2020, (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 30, 2020. Claimant participated personally and was represented by attorney Michelle Hoyt Swanstrom. Employer participated through human resource director Ashley Ruffcorn and administrator Lisa Hanson. Employer's Exhibit 1 was received.

ISSUE:

Is 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 began working for employer on January 2, 2020. Claimant was hired by employer as a full-time EMT.

In March 2020, the United States declared a public health emergency because of the COVID 19 pandemic.

Claimant was pregnant and was given a 35-pound lifting restriction. Claimant informed employer of the restriction at least by March 17, 2020. Employer did not indicate they would have any issue accommodating the restriction. Claimant's last day of work was March 22, 2020. Claimant's supervisor, Reagan Frasier, told claimant she was being temporarily furloughed as an EMT and that claimant could pick up hours as a CNA.

Employer posted available hours for CNAs on Facebook. Claimant tried to pick up hours four or five times in March or April, but they were not given to her. On one occasion, claimant was assigned the hours but ended up having to call in and cancel the shift.

On June 11, 2020, human resource director Ashley Ruffcorn called claimant and informed her that she had been replaced as an EMT. Ruffcorn offered claimant a full-time position as a CNA.

Ruffcorn did not give claimant the rate of pay and claimant did not believe she was allowed to take the position because of a non-compete contract. The parties did not discuss these issues. Instead, claimant stated she would get a second opinion from her doctor. Claimant did not return Ruffcorn's call and Ruffcorn made no further attempt to contact claimant.

After seeing her doctor in June 2020, all lifting restrictions were lifted.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work effective March 22, 2020.

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".

In this case, claimant is able to and available for work effective March 22, 2020. Although claimant did have a lifting restriction, employer was able to accommodate it until it laid her off on March 22, 2020. Claimant continued to be available for work, even though she was not always assigned the CNA shifts she offered to work. After claimant was released from employment, her restriction was lifted and she continued to be able to and available for work.

The Benefits Bureau of Iowa Workforce Development has not issued an initial decision on whether claimant's separation from employment and/or refusal of offer of work on June 11, 2020, disqualifies her from receiving benefits. That issue will be remanded for an initial determination.

DECISION:

The August 14, 2020, (reference 02) unemployment insurance decision is reversed. The claimant is able to and available for work effective March 22, 2020, provided she is otherwise eligible.

REMAND:

The issue of whether claimant's separation from employment/refusal of offer of work on June 11, 2020, disqualifies her from receiving unemployment insurance benefits is remanded to the Benefits Bureau of Iowa Workforce Development for an investigation and initial decision.



Christine A. Louis
Administrative Law Judge
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October 2, 2020
Decision Dated and Mailed

cal/scn