

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

GRANT M DAY
Claimant

A K C LLC
Employer

APPEAL 21A-UI-04061-SN-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 03/22/20
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 22, 2021, reference 01, unemployment insurance decision that denied benefits effective May 3, 2020 based upon him requesting and being granted a leave of absence. After due notice was issued, a telephone conference hearing was scheduled to be held on April 2, 2021. Claimant participated. The claimant was supported in his testimony by Mike Day. The employer participated through Owner Bruce Kroll. The administrative law judge took official notice of the agency records.

ISSUE:

Was the claimant able to work, available for work, and actively and earnestly seeking work the week ending May 3, 2021?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant, Grant Day, has worked as a part-time crew member for the employer, A K C LLC, since March 29, 2017. A K C LLC operates a Culver's fast food restaurant franchise. His hourly pay is \$10 per hour.

The employer implemented a leave program for employees who felt uncomfortable working during the Covid19 pandemic. Employees who felt uncomfortable could take an unpaid leave of absence for as long as they wanted without providing documentation or further justification.

The claimant has asthma and did not believe it was safe for him to work in the fast food restaurant in the wake of the pandemic.

In mid-March 2020, the claimant's family sent an email to Owner Bruce Kroll stating the claimant did not feel comfortable working in the restaurant's dining room in the wake of the Covid19 pandemic due to his asthma. The claimant believed it was dangerous working in the restaurant

regardless of the mitigation measures it took given his asthma gave him a higher mortality risk if he was infected.

On March 14, 2020, Owner Bruce Kroll granted the claimant's leave of absence corresponding with the employer's policy. Mr. Kroll and the claimant did not agree on a date for him to return to work.

On March 22, 2020, the employer closed the dining room to the public. The employer also placed splash at points of sale and took other reasonable Covid19 mitigation measures.

On the week ending November 15, 2020, the claimant returned to work for the employer. Work would have been available for the claimant if he had not requested a leave of absence.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not able to work and available for work effective May 3, 2021.

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. 871-24.22(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.

Iowa Admin. Code r. 871-24.22(2) provides:

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.

(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.

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.

An individual claiming benefits has the burden of proof that he is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

The claimant's family requested the claimant be given a leave of absence and the employer granted it. As stated above, this disqualifies the claimant from receiving benefits because it is deemed a period of voluntary unemployment under Iowa Admin. Code r. 871-24.23(10). The claimant contends the employer initiated the leave of absence, but his leave was due to his own circumstances. Benefits are denied.

DECISION:

The January 27, 2021, reference 01, unemployment insurance decision is affirmed. The claimant was not able to work and available for work effective May 3, 2020. Benefits are denied.



Sean M. Nelson
Administrative Law Judge
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April 07, 2021
Decision Dated and Mailed

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