

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**HEATHER OWENS**

Claimant

**APPEAL 22A-UI-00677-DH-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**

Employer

**OC: 03/21/21**

**Claimant: Appellant (4)**

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

Iowa Admin. Code r. 871-24.23(10) - Leave of Absence

Iowa Code § 96.6(2) - Timely Appeal

**STATEMENT OF THE CASE:**

Claimant, Heather Owens, filed an appeal from the December 7, 2021 (reference 03) unemployment insurance decision that denied benefits as of 11/07/21 based upon a determination that claimant was granted a leave of absence, making them voluntarily unemployed and not available for work. The parties were properly notified of the hearing. A telephonic hearing was scheduled for February 21, 2022, at 11:00 AM. The claimant participated. The employer, Casey's Marketing Company, failed to call the toll-free number listed on the hearing notice and did not participate in the hearing. The employer requested the ALJ connect a witness, Mr. Wright, for the hearing, however, since the employer failed to call into the hearing, the undersigned did not call their witness, since nowhere is the witness identified as having authority to act on behalf of the employer. The administrative law judge took official notice of the administrative record.

**ISSUES:**

Is the claimant able to and available for work?

Was the claimant on a voluntary leave of absence?

**FINDINGS OF FACT:**

Having heard the testimony and reviewed all of the evidence in the record, the undersigned finds:

Claimant's first day of work was July 26, or 27, 2021. She was hired as a fulltime kitchen help with a varied schedule, with Saturdays off. Employee requested and was granted an unpaid leave of absence. The request was for the absence to begin July 30, 2021, with an anticipated return to work with restrictions on October 25, 2021, and no restrictions as of November 8, 2021. See claimant's attachment to the appeal. Claimant's first day of unpaid leave was July 30, 2021.

The Reed Group is employer's third-party administrator for leave. Claimant contacted the Reed Group on October 19, 2021, to advise that she is able to return to work fulltime with restrictions. Reed group advised employer they would close out her leave and for her to contact employer

directly to get placed back on the schedule. October 20, 2021, claimant went to Casey's to talk with her supervisor, Sarah, but Sarah was busy, so claimant left and sent Sarah a text regarding the situation and her ability to return to work. Claimant never got a response.

October 21, 2021, claimant contacted the Reed Group for a point of contact. Reed Group advised they had a contact with personnel and that Reed Group would send personnel a message regarding situation. Claimant did not receive a response and sometime after October 21, 2021, and before November 10, 2021, claimant called the Reed Group for an update. Claimant was advised that since her leave was closed, Reed Group was hands off and needed to contact employer directly.

In the evening of November 10, 2021, Trey Wright, called claimant. Mr. Wright is the new manager of the employer's store location claimant worked. After the two discussed matters, Mr. Wright explained that Sarah is no longer working at this store, he did not know claimant was an employee at that store and that he would check into things and get back with her. He did so on November 22, 2021, advising her that Casey's could not accommodate her restrictions. Employer kept her on unpaid leave against claimant's wishes to return to work. Claimant's restrictions dealt with getting retrained, since she had only been there for three or four days prior to the unpaid leave, the need for some assistance and she not to utilize the heavier kitchen equipment.

Claimant and Mr. Wright had a couple of telephone conversations early December, as all restrictions were going to soon be removed. The restrictions were removed December 8, 2021, with claimant advising Mr. Wright of this on December 9, 2021, to get on the schedule. Mr. Wright called December 24, 2021, that he got her on the schedule as of December 27, 2021.

Claimant's voluntary leave was July 30, 2021, through October 25, 2021. Claimant was able to return to work with some restrictions as of October 25, 2021, but employer was not able to accommodate her restrictions, requiring her to remain on unpaid leave. Claimant had no restrictions beginning December 9, 2021, but employer did not get her back on the schedule until December 27, 2021.

#### **REASONING AND CONCLUSIONS OF LAW:**

The first issue to be considered in this whether claimant was on a requested and approved leave of absence.

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.

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

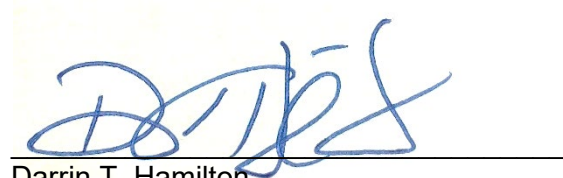
unemployed, while employed at the individual's regular job, as defined in section 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, paragraph "c". The work search requirements of this subsection and the disqualification requirement 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".

Claimant was on a requested and approved leave of absence starting July 30, 2021, and ending October 24, 2021. Employer's third-party administrator ended claimant's leave as of October 25, 2021, because she was able to and available to return to work with some restrictions. The employer did not accommodate her restrictions and did not schedule her for work, forcing her to remain on an unpaid leave of absence, not at her request, starting October 25, 2021. Because it was the employer's choice that claimant remain on a leave of absence and not claimant's choice, the administrative law judge finds that claimant was not on a voluntary leave of absence. Claimant was otherwise able to and available for work, with some restrictions. Benefits are allowed, provided she is otherwise eligible as of the benefit week ending October 30, 2021. Claimant had no restrictions as of December 8, 2021, but was not removed from involuntary leave and placed on the schedule until December 27, 2021.

**DECISION:**

The December 7, 2021 (reference 03) unemployment insurance decision is **MODIFIED** In favor of Appellant. Claimant was on a requested and approved leave of absence and therefore not able to work and available for work for the benefit weeks ending August 7, 2021, through week ending October 23, 2021, and not eligible for benefits for these weeks.

For benefit weeks beginning October 30, 2021, through and ending December 25, 2021, regular unemployment benefits are allowed, provided claimant is otherwise eligible, as the leave of absence was no longer voluntary, and claimant was otherwise able to and available to work. Claimant returned to work on December 27, 2021, making her no longer eligible for regular unemployment benefits for the benefit week ending January 1, 2022, as she returned to her employment for the same hours and wages.



Darrin T. Hamilton  
Administrative Law Judge

March 9, 2022  
Decision Dated and Mailed

dh/scn