

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CAMEO KERR
Claimant

APPEAL 20A-UI-09509-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 04/12/20
Claimant: Appellant (2)

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:

On August 11, 2020, Cameo Kerr (claimant) filed an appeal from the August 7, 2020, reference 01, unemployment insurance decision that denied benefits for the week of April 19 through April 25, 2020, based upon the determination she was not able to and available for work with Care Initiatives (employer). After due notice was issued, a telephone hearing was held on September 24, 2020. The claimant participated. The employer did not respond to the hearing notice and did not participate. No exhibits were offered into the record.

ISSUE:

Was the claimant able to and available for work from April 12 through April 25, 2020?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began working for the employer in January 2020 as a part-time CNA. On or about April 10, the claimant notified the employer that she had been in contact with someone who had COVID-19. The employer removed the claimant from the schedule and ordered her to remain at home for two weeks. The claimant returned to work on or about April 26.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was able to and available for work from April 12 through April 25, 2020. Benefits are allowed.

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". [Emphasis added.]

Iowa Code section 96.19(38)c provides:

Definitions.

38. Total and partial unemployment

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

Iowa Admin. Code r. 871-24.22 provides, in relevant part:

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.

...

(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.

...

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.

Iowa Admin. Code r. 871-24.23 provides, in relevant part:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

...

(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.

...

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

An individual claiming benefits has the burden of proving that she is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. However, if the individual is partially or temporarily unemployed with their regular employer, they are considered able to and available for work. The claimant's unrefuted testimony is that she did not request a leave of absence or request to be taken off the schedule. The employer made the decision to remove her from the schedule due to the emergency pandemic situation. Therefore, the claimant was temporarily unemployed for the weeks of April 12 through April 25, and she is considered able to and available for work during that time. Benefits are allowed.

DECISION:

The August 7, 2020, reference 01, unemployment insurance decision is reversed. The claimant was temporarily unemployed and considered able to work and available for work from April 12 through April 25, 2020. Benefits are allowed.



Stephanie R. Callahan
Administrative Law Judge

September 28, 2020
Decision Dated and Mailed

src/sam