

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**FARZANA AKHTAR**  
Claimant

**APPEAL 21A-UI-05890-S2-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SAFELITE SOLUTIONS LLC**  
Employer

**OC: 11/29/20**  
**Claimant: Appellant (1R)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22(1) - Able to Work - illness, injury or pregnancy  
Iowa Admin. Code r. 871-24.23(35) - Availability Disqualifications

**STATEMENT OF THE CASE:**

On February 11, 2021, the claimant filed an appeal from the February 2, 2021, (reference 02) unemployment insurance decision that denied benefits based upon a finding that claimant is not able to and available for work. The parties were properly notified about the hearing. A telephone hearing was held on April 30, 2021. Claimant Farzana Akhtar participated. Employer Safelite Solutions, LLC. did not register for the hearing and did not participate. Claimant's Exhibits A – D were admitted. This hearing was consolidated with Appeal No. 21A-DUA-01290-S2-T.

**ISSUES:**

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 in September 2019. She worked full time as a customer service representative until her discharge on April 5, 2021.

On November 28, 2020, claimant became sick with COVID-19 symptoms. On December 1, 2020, claimant tested positive for COVID-19. See Exhibit A. Claimant was required by her employer to quarantine for two weeks. However, after two weeks, complainant still suffered from her symptoms, including coughing, fever, headache, and fatigue. Claimant returned to the doctor and was diagnosed with long-haul COVID-19 because her symptoms continued for months. She provided doctor's notes to her employer removing her from work. See Exhibits B and C. On February 3, 2021, claimant was released to return to work with the restrictions of working two hours, followed by a 15 minute break, followed by one more hour of work. See Exhibit D. Employer was unable to accommodate the restriction.

Claimant was released to return to work without restrictions on March 31, 2021. However, claimant did not notice an April 1, 2021, email from employer notifying her to contact employer

by April 4, 2021, so they could plan her return to work. Claimant was discharged on April 5, 2021, after not contacting employer.

Claimant underwent surgery related to the COVID-19 long-haul symptoms on April 23, 2021.

There has been no initial investigation or decision regarding the issues of separation from employment and whether claimant is able to and available for work after the separation.

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

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work effective November 29, 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".

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. 871-24.23(35) provides:

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

(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.

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. The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that "[i]nsofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

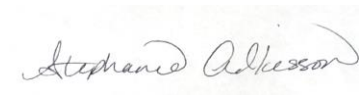
Inasmuch as the medical condition is not work-related and the treating physician has not released the claimant to return to work with or without restriction, she has not established her ability to work while still an employee of Safelite effective November 29, 2020 through the week ending April 3, 2021. While claimant may be able to perform limited work, the employer is not obligated to accommodate a non-work related medical condition, and since she had not been released to perform her full work duties until the time of her separation, she is not considered able to or available for work.

**DECISION:**

The February 2, 2021, (reference 02) unemployment insurance decision is affirmed. The claimant is not available for work effective November 29, 2020, and regular, state-funded unemployment insurance benefits are denied. Claimant may be eligible for Pandemic Unemployment Assistance.

**REMAND:**

The issue of separation from employment and whether claimant is able to and available for work after the separation are remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.



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Stephanie Adkisson  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515)478-3528

May 7, 2021

Decision Dated and Mailed

sa/kmj

**NOTE TO CLAIMANT:**

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA, you may be required to repay the benefits you've received so far.**