

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TIFFANY L KELLEY
Claimant

EASTERN STAR MASONIC HOME
Employer

**APPEAL 21A-UI-00400-AW-T
ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 06/07/20
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:

Claimant filed an appeal from the November 17, 2020 (reference 01) unemployment insurance decision that found claimant was not able to and available for work as of June 7, 2020. The parties were properly notified of the hearing. A telephone hearing was held on February 8, 2021 at 1:00 p.m. Claimant participated. Employer participated through Alison Purtle, Human Resources Business Officer, and Cortney Rose, Supervisor. Employer's Exhibit 1 was admitted.

ISSUES:

Whether claimant is able to and available for work.
Whether claimant is on an approved leave of absence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began her employment as a full-time Personal Service Attendant with Eastern Start Masonic Home on December 5, 2018. Claimant works approximately 32 hours per week. Claimant's direct supervisor is Cortney Rose.

Claimant's physician completed a Certification of Health Care Provider for Employee's Serious Health Condition (Family and Medical Leave Act) on June 18, 2020. (Exhibit 1, pp. 7 – 10) Claimant's physician stated that claimant would be incapacitated from June 7, 2020 until June 23, 2020 and that claimant should be off of work until June 23, 2020. (Exhibit 1, page 9)

Claimant filed an initial claim for unemployment insurance benefits effective June 7, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was not able to and available for work effective June 7, 2020. Benefits are denied.

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), (2) provides, in pertinent 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.

Iowa Admin. Code r. 871-24.23(1), (6), (35) provide:

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.

(6) If an individual has a medical report on file submitted by a physician, stating such individual is not presently able to 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.

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

Claimant was under the care of a medical professional who stated claimant was incapacitated and should not work from June 7, 2020 until June 23, 2020. Claimant was not able to or available for work. Benefits are denied.

DECISION:

The November 17, 2020 (reference 01) unemployment insurance decision is affirmed. Claimant was not able to or available for work. Benefits are denied.



Adrienne C. Williamson
Administrative Law Judge
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February 25, 2021
Decision Dated and Mailed

acw/scn