

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TILLIE A ALDRICH
Claimant

AVENTURE STAFFING & PROFESSIONAL
Employer

APPEAL 20A-UI-10161-S1-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 05/24/20
Claimant: Appellant (1)

Iowa Code § 96.4-3 – Able and Available
871 IAC 24.23(10) – Voluntary Leave of Absence

STATEMENT OF THE CASE:

Tillie Aldrich (claimant) appealed a representative's July 16, 2020, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits as of May 24, 2020, because a leave of absence was granted by Aventure Staffing & Professional (employer) at the claimant's request. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 7, 2020. The claimant participated personally. The employer participated by Cyd Fleckenstein, Chief Risk Officer, and Carrie Ducoff, Bridge Manager. The administrative law judge took official notice of the administrative file.

ISSUE:

The issue is whether the claimant is available for work and whether the claimant was on an approved leave of absence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer is a temporary agency. The claimant was hired on February 18, 2019. The claimant has custody of her daughter's two minor children. The last day the claimant accepted an assignment was May 15, 2020.

The claimant lives within the Omaha Reservation. All daycare facilities closed on the Omaha Reservation in March 2020. She did not have daycare for the two grandchildren for whom she cared. The claimant provided the employer with a tribal resolution containing an order of isolation signed on April 17, 2020. The resolution contained a curfew, among other things. The tribe told the claimant she had to quarantine for two weeks after returning home from her assignment on May 15, 2020. The claimant gave the employer a doctor's note dated May 19, 2020, that excused her from working until further notice. The claimant continues to be under the same tribal reservation. She has not been released to return to work by a doctor. There is no daycare available.

The claimant discussed her restrictions with the employer. The employer paid the claimant emergency sick leave of \$188.00 for the two-week period ending June 6, 2020. It paid her \$125.00 per week in Family First Coronavirus Response Act funds from June 7, 2020, through August 9, 2020.

The claimant filed for unemployment insurance benefits with an effective date of May 24, 2020. Her weekly benefit amount was determined to be \$203.00. The claimant received no state unemployment insurance benefits or Federal Pandemic Unemployment Compensation after May 24, 2020.

REASONING AND CONCLUSIONS OF LAW:

Iowa Admin. Code r. 871-24.23(1) provides:

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.

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(8) provides:

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

(8) Where availability for work is unduly limited because of not having made adequate arrangements for child care.

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.

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). When employees are unable to perform work due to a medical condition, they are considered to be unavailable for work. Likewise, when employees are spending working hours caring for children, they are considered to be unavailable for work. The claimant did not have childcare as of March 2020. The claimant's physician restricted her from working as of May 19, 2020.

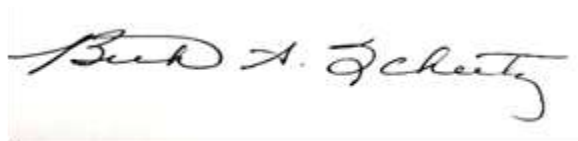
The claimant spoke with the employer about her restrictions and the employer arranged to pay her lost wages and emergency benefits. When employees request and are granted a leave of absence, they are considered to be voluntarily unemployed. The claimant is considered to be voluntarily unemployed, or unavailable for work, during the period of the leave of absence and is not eligible to receive unemployment insurance benefits. Benefits are denied as of May 24, 2020.

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, she may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed. The claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

DECISION:

The representative's July 16, 2020, decision (reference 01) is affirmed. The claimant is considered to be unavailable for work and is not eligible to receive unemployment insurance benefits from May 24, 2020.

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. 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. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.



Beth A. Scheetz
Administrative Law Judge

October 9, 2020
Decision Dated and Mailed

bas/sam