

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARCIA D KOEPPE
Claimant

CASEYS MARKETING COMPANY
Employer

APPEAL 21A-UI-05479-S1-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/29/20
Claimant: Appellant (2R)

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

STATEMENT OF THE CASE:

Marcia Koeppe (claimant) appealed a representative's February 4, 2021, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits as of November 29, 2020, because a leave of absence was granted by Casey's Marketing Company (employer) at the claimant's request. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 23, 2021. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing.

The claimant offered and Exhibits A and B were received into evidence. 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 claimant was hired on May 15, 2018, as a part-time cashier. She worked Mondays and Tuesdays only. The claimant was diagnosed with anxiety. On June 9, 2020, the claimant's doctor indicated in a note that "wearing a mask at all times may not be in her best interest".

On November 4, 2020, her physician completed a Medical Inquiry Form in Response to Request to Modify Face Mask Requirement from the employer. The doctor responded that the claimant's disability prevented her from wearing a face mask and face shield. The physician suggested the employer accommodate the claimant by having her work behind Plexiglas.

The claimant was on a leave of absence from work from November 11, 2020, through November 24, 2020, because she was exposed to Covid-19. When she returned to work on

Monday, November 30, 2020, the employer had a mask or face shield mandate. The employer would not allow the claimant to return to work with accommodations. It placed her on a leave of absence because of her medical restrictions. On March 8, 2020, the employer separated the claimant from employment.

REASONING AND CONCLUSIONS OF LAW:

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".

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(1) and (10) 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.

(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.

When employees request and are granted a leave of absence, they are considered to be voluntarily unemployed. The claimant requested a medical leave of absence and the employer granted the request. The claimant is considered to be voluntarily unemployed, or unavailable for work, during the period of the medical leave of absence and is not eligible to receive unemployment insurance benefits.

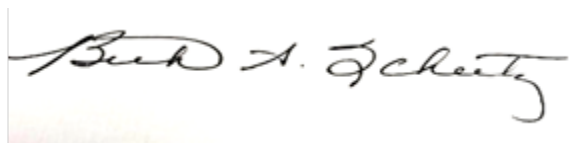
The physician released the claimant to return to work with restrictions. The release is evidence that she was able and available for work. After her quarantine, the claimant was able and available for work but the employer did not have work for her. The claimant was eligible to receive unemployment insurance benefits as of November 29, 2020, the date of her claim, provided the claimant is otherwise eligible.

The issue of the claimant's separation from employment is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

DECISION:

The representative's February 4, 2021, decision (reference 01) is reversed. The claimant was eligible to receive unemployment insurance benefits as of November 29, 2020, provided the claimant is otherwise eligible.

The issue of the claimant's separation from employment is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

A handwritten signature in black ink, reading "Beth A. Scheetz", is written over a horizontal line.

Beth A. Scheetz
Administrative Law Judge

April 28, 2021
Decision Dated and Mailed

bas/kmj