

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

HANNA L NEFZGER
Claimant

APPEAL NO. 21A-UI-02847-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ORBIS CORPORATION
Employer

OC: 11/01/20
Claimant: Appellant (5)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 7, 2021, reference 02, decision that denied benefits effective November 1, 2020, based on the deputy's conclusion that the claimant requested and was granted a leave of absence, was voluntarily unemployed, and was not available for work. After due notice was issued, a hearing was held on March 11, 2021. Claimant participated. The employer did not provide a telephone number for the appeal hearing and did not participate. Exhibits A, B and C were received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, and WAGE-A.

ISSUES:

Whether the claimant was able to work and available for work during the period of November 1, 2020 through January 30, 2021.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant established an original claim for benefits that was effective November 1, 2020. Iowa Workforce Development set the weekly benefit amount for regular benefits at \$323.00. The claimant made weekly claims for each of the weeks between November 1, 2020 and January 30, 2021. The weekly claims appear in the IWD records as follows:

WEEK ENDING	WK ST	AB AV	RF OF	ER CT	IN PR	WAGES	VACAT	HLDY	P	PROCESSED DATE
01/30/21	N	Y	N	0	N	0	0	0	N	02/04/21
01/23/21	N	Y	N	0	N	0	0	0	N	01/28/21
01/16/21	N	Y	N	0	N	0	0	0	N	01/17/21
01/09/21	N	Y	N	0	N	0	0	0	N	01/10/21
01/02/21	N	Y	N	0	N	0	0	0	N	01/04/21
12/26/20	N	Y	N	0	N	0	0	186	N	01/01/21
12/19/20	N	Y	N	0	N	0	0	0	N	12/22/20
12/12/20	N	Y	N	0	N	0	0	0	N	12/15/20
12/05/20	N	Y	N	0	N	0	0	0	N	12/10/20
11/28/20	N	Y	N	2	Y	0	0	186	N	12/07/20

11/28/20	N	Y	N	0	N	0	0	0	N	12/01/20
11/21/20	N	Y	N	0	N	0	0	0	N	11/24/20
11/14/20	N	Y	N	0	N	0	0	0	N	11/17/20
11/07/20	L	Y	N	0	N	112	0	0	N	11/11/20

The claimant was most recently employed as a part-time machine press operator for Orbis Corporation. Orbis is a base period employer. The claimant most recently performed work for Orbis on November 1, 2020. The claimant was assigned to the “D” shift and her shift ran from 6:00 p.m. to 12:00 a.m. The claimant’s work schedule consisted of two shifts one week and four shifts the next. The claimant generally performed 41 hours of work per two-week schedule rotation. The work involved manufacturing plastic bins/totes. The claimant would lift one plastic bin at a time off of the conveyor. The claimant would then place the bin in a cutting press to trim the bin/tote. The claimant would then remove the bin/tote from the press and place it on a skid/pallet. The claimant would then wrap the stacked bins with stretch-wrap. The claimant would have to operate a powered pallet jack to move the skid/pallet. The claimant estimates it would take no more than five pounds of push/pull effort to operate the jack. A reasonable person would expect operation of the jack to require more than five pounds of push/pull effort.

During the last week of October 2020, the claimant went to the emergency room for medical evaluation and treatment due to pregnancy-related bleeding and pain. The claimant was in the first trimester of what appears to have been a high-risk pregnancy. The claimant was diagnosed with a subchorionic hematoma. The emergency room doctor advised the claimant that she was at risk of miscarriage. The emergency room doctor took the claimant off work through Friday, October 30, 2020. The claimant asserts that the emergency room doctor released the claimant to return to light-duty work that included a 10-pound lifting restriction. However, the claimant has not submitted a copy of this statement of her medical restrictions or any subsequent statement of her medical restrictions for the administrative law judge’s consideration.

The claimant reported for work on November 1, 2020. At that time, she was without a regular supervisor. Adam Zimmerman, C Shift Supervisor, was filling in as the claimant’s supervisor. Early in the shift, Mr. Zimmerman requested that the claimant provide the medical excuse/release pertaining to her recent time off work. At the break, the claimant gave the note from the emergency room doctor to Mr. Zimmerman. Mr. Zimmerman told the claimant that he would need to forward her note to human resources. After the claimant worked on November 1, 2020, she was next scheduled to work on Wednesday, November 4, 2020.

Prior to the November 4 shift, the claimant called the human resources manager, Sarah Dugan, and asked whether Ms. Dugan had received her medical note. The claimant asserts that during that call Ms. Dugan told the claimant not to return to the employment because the employer could not accommodate the 10-pound lifting restriction set forth in the medical note. The claimant asserts Ms. Dugan told her not to return until she was released to return without restrictions, that the employer instructed her to file for unemployment insurance benefits, and that the employer instructed her to provide an update after her next medical appointment. The Claimant’s Exhibit C would lead a reasonable person to conclude that the claimant’s testimony about the employer telling her not to return to work is not credible and that there was more to the initial statement of medical restrictions.

The claimant primarily uses a certified nursing midwife for her pregnancy-related medical needs, in lieu of an obstetrician. On November 9, 2020, the claimant received an updated medical release note from the Certified Nursing Midwife. The claimant asserts that the note stated the

claimant could immediately return to light-duty work with no lifting more than 20 pounds and with frequent rest/hydration/restroom breaks. Again, the claimant has not provided the note for the administrative law judge's consideration. The claimant asserts she desired to continue to perform work for the employer, that she communicated this to the employer, but that the employer would not allow her to return to the employment during her pregnancy. The claimant's Exhibit C undermines the claimant's assertions.

The claimant provided in Exhibit C email cropped correspondence between the claimant and Ms. Dugan. The bulk of the exhibit is Ms. Dugan's December 1, 2020 reply to a message from the claimant. The exhibit does not include the claimant's full message. Furthermore, the exhibits reveals that the claimant purposely omitted her full message from her documentary evidence. In an area at the top of the exhibit, an area the claimant likely believed was obscured when she submitted the exhibit, one can make out a faint portion of the claimant's message to the employer. That partially obscured portion of the message states: "...gave me a note that says I must take frequent restroom, water and sitting breaks. She suggested not returning until I am restriction free unless I can follow the restrictions closely." The portion of the claimant's message that is more readily visible appears states: "I'm not sure if that would work or if I should stay off until I am restriction free. What are your thoughts?" Ms. Dugan responded as follows:

I would suggest waiting to return until you are restriction free as well. I don't think we'd be able to get you those water and sitting breaks as often as would probably be needed.

Dealing with unemployment has been a nightmare on our end as well. Since we have to use a third party; Equifax, I feel a lot of issues are created that don't need to be. Sorry about this! Let me know if there's anything that comes out of the fact finding interview that I can do to help.

The claimant advises there was no agreement about a return-to-work date. The claimant asserts Ms. Dugan told her she would let her know when she could return. Again, Exhibit C undermines the claimant's assertion. The claimant's baby is not due until June 12, 2021.

The claimant asserts, without offering supporting medical documentation, that the certified nursing midwife lifted the 20-pound lifting restriction effective February 9, 2021 and that the certified nursing midwife instructed the claimant she could lift whatever she was comfortable lifting. But we have no medical documentation to support the assertion.

When the claimant established her claim for unemployment insurance benefits, she reported that she had been laid off due to a lack of work. Iowa Workforce Development coded her as a group 3, job-attached claimant. The weekly claim reporting system did not prompt the claimant to provide job contact information. The claimant expresses that she continued to be interested in returning to the Orbis employment and did not search for other employment.

Orbis provided the claimant with holiday pay for the Thanksgiving and Christmas holiday. The claimant reported these payments when she made her weekly claims. These payments indicate that the employer considered the claimant to be an employee on a leave of absence throughout this period.

The claimant asserts that after her most recent appointment with the midwife, the claimant contacted Ms. Dugan and again expressed interest in returning to the employment. The claimant asserts Ms. Dugan told the claimant she could not come back at that time, regardless

of the medical restrictions in place. The claimant asserts she then gave up on the employment and discontinued her weekly claims. Exhibit C undermines the claimant's assertions.

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 96.19, 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(2) 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.

(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. 871-24.22(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) 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.

...

(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.

Iowa Code section 96.19(38) provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

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.

If a claimant individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. Iowa Code section 96.7(2)(a)(2)(a).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa Ct. App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder

may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The weight of the evidence establishes that the claimant, with or without tacit approval of the employer, intentionally misled the administrative law judge regarding the circumstances surrounding her ability to work and her availability for work since she established the original claim for benefits that was effective November 1, 2020. The weight of the evidence fails to support the claimant's assertion that she was able to perform her regular duties, with or without reasonable accommodation, or that the employer compelled her to go off work. The weight of the evidence indicates instead that the claimant commenced a voluntary, employer-approved leave of absence that was based on medical restrictions imposed in connection with her high-risk pregnancy. The claimant presented insufficient evidence to prove that she has been able to work and available for work since November 1, 2020. Benefits are denied effective November 1, 2020. The disqualification continued through the benefit week that ended January 30, 2021. If and when the claimant reactivates her claim for benefits, her ability to work and availability for work during that future period will continue to be a factor in determining her eligibility for benefits.

DECISION:

The January 7, 2021, reference 02, is modified as follows. The claimant has not demonstrated that she has been able to work and available for work within the meaning of the law since she established the original claim for benefits that was effective November 1, 2020. Benefits are denied effective November 1, 2020. The disqualification continued through the benefit week that ended January 30, 2021. If and when the claimant reactivates her claim for benefits, her ability to work and availability for work during that future period will continue to be a factor in determining her eligibility for benefits.



James E. Timberland
Administrative Law Judge

July 6, 2021
Decision Dated and Mailed

jet/scn

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 unemployed or continue to be 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>

ATTENTION: On May 11, 2021, Governor Reynolds announced that Iowa will end its participation in federal pandemic-related unemployment benefit programs effective June 12, 2021. The last payable week for PUA in Iowa will be the week ending June 12, 2021. Additional information can be found in the press release at <https://www.iowaworkforcedevelopment.gov/iowa-end-participation-federal-unemployment-benefit-programs-citing-strong-labor-market-and>.