

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ELIZABETH BEHREND

Claimant

APPEAL 20A-UI-12749-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

KOHL'S DEPARTMENT STORE INC

Employer

OC: 06/21/20

Claimant: Appellant (1)

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 October 12, 2020, the claimant filed an appeal from the October 5, 2020 (reference 01) unemployment insurance decision that denied benefits because she requested and was granted a leave of absence. After due notice was issued, a telephone conference hearing was scheduled to be held on December 7, 2020 at 8:00 a.m. Hearings representative Thomas Kuiper and Store Manager John O'Brien participated for the employer. Claimant participated.

The administrative law judge took official notice of the following administrative records: KCCO, DBRO, and WAGE-A.

ISSUE:

Whether the claimant was able to work, available for work, and actively and earnestly after June 21, 2020?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The employer has a policy which requires employees who have been in the presence of someone known to be infected with Covid19 to quarantine for 14 days. The employer has this policy to ensure its clientele, persons with physical disabilities, remains safe and healthy in its facilities. The employer also pays employees for the time they are out of work on quarantine.

Claimant worked as a part-time sales associate for the employer from June 27, 2019 to July 23, 2020. Claimant's direct supervisor was originally Store Manager Kyle West. Shortly after claimant underwent her medical leave, her immediate supervisor was Store Manager John O'Brien. Claimant's hourly wage was \$11.50 per hour.

On June 22, 2020 or June 23, 2020, claimant began experiencing symptoms of an illness. Claimant would not have been able to perform her duties on that date.

On June 24, 2020, Iowa Public Health told claimant that two of her clients at her regular employer, Spring Harbor, tested positive. Iowa Public Health said the earliest claimant could return to work would be on July 9, 2020 because she had been in the presence of two people who tested positive for Covid19.

On June 24, 2020, Claimant relayed this news to Andi Hill and she directed her to send an email providing the same information to the employer's medical leave provider, AR Business Continuity. Prior to sending an email to AR Business Continuity, claimant had a conversation with Holly (last name unknown) at AR Business Continuity. Holly asked claimant questions about her exposure to Covid19 and informed her that she could not return until she had a negative result from a Covid19 test. Claimant underwent a Covid19 test later that day.

On June 25, 2020, claimant received an email (Exhibit A) from AR Business Continuity stating that since she had been tested for COVID19, she should not come in until the employer received negative test results.

On June 30, 2020, claimant went to her medical provider. Claimant had received a negative result from the test at that time, but she was sick to the point that she could not get out of bed. Claimant could not have performed her duties on that day.

On June 30, 2020, claimant informed the employer by sending an email (Exhibit B) to AR Business Continuity that she received negative results for her Covid19 test, but added that her doctor was recommending she quarantine for two weeks. AR Business continuity replied that claimant was to follow her doctor's orders and self-quarantine until July 9, 2020.

On July 1, 2020, claimant underwent a second a second Covid19 test.

On July 8, 2020, claimant went back to her medical provider. On that date, claimant's medical provider cleared her to return to work.

On July 8, 2020, claimant informed the employer by sending an email (Exhibit C) to AR Business Continuity that she was still experiencing symptoms from a respiratory infection. Claimant also told informed the employer that a coworker would be covering her shift on July 11, 2020. Claimant also wrote she would be returning to work on her next scheduled shift during the following week.

Claimant returned to work on July 13, 2020. Claimant had recovered to the point that she was able to perform her duties for the employer. The employer had work available for claimant during the period claimant was on the leave of absence.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work effective July 12, 2020.

Iowa Code § 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)).

Subsection d of Iowa Code § 96.5(1) provides an exception where:

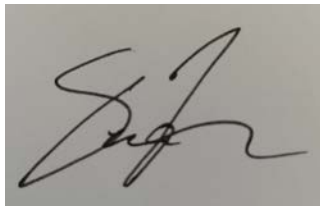
The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and ... the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

The statute specifically requires that the employee has recovered from the illness or injury, and this recovery has been certified by a physician. The exception in section 96.5(1)(d) only applies when an employee is *fully* recovered and the employer has not held open the employee's position. *White*, 487 N.W.2d at 346; *Hedges v. Iowa Dep't of Job Serv.*, 368 N.W.2d 862, 867 (Iowa Ct. App. 1985); see also *Geiken v. Lutheran Home for the Aged Ass'n.*, 468 N.W.2d 223, 226 (Iowa 1991) (noting the full recovery standard of section 96.5(1)(d)).

Claimant requested and was granted a medical leave of absence starting on June 24, 2020 and ending with her return to work on July 13, 2020. Claimant testified that she would not have been able to perform her duties during the time of the absence. The employer had work available for her during the time she was on her leave of absence. Claimant was allowed to return to her regular position after she recovered. Claimant was not able and available during the time beginning on June 24, 2020 and ending on July 12, 2020.

DECISION:

The October 5, 2020, (reference 01) unemployment insurance decision is affirmed. The claimant was not able to work and available for work from June 24, 2020 to July 12, 2020. Benefits are denied.



Sean M. Nelson
Administrative Law Judge
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December 31, 2020
Decision Dated and Mailed

smn/scn