

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHELIESHA M PRESLER
Claimant

ABCM CORPORATION
Employer

APPEAL 21A-UI-20873-AR-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 07/25/21
Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871—24.23(10) – Voluntary Leave of Absence

STATEMENT OF THE CASE:

The claimant, Cheliesha M. Presler, filed an appeal from the September 15, 2021, (reference 03) unemployment insurance decision that denied benefits based upon the determination that claimant was on a voluntary leave of absence from employment with the employer, ABCM Corporation. The parties were properly notified of the hearing. A telephone hearing was held on November 10, 2021. The claimant participated personally. The employer did not respond to the hearing notice and did not participate. The administrative law judge took official notice of the administrative record.

ISSUES:

Is the claimant able to and available for work?
Is the claimant 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 full-time employment with this employer in April 2019 as a certified nursing assistant. She remains employed as of the date of her hearing.

While on vacation, claimant hurt her knee. She saw her doctor on July 23, 2021, at which time she was excused from work until further notice. The same day, she returned the doctor's note to the employer, and the employer assisted her to fill out paperwork for leave protected by FMLA.

Claimant's physician released claimant to return to work with restrictions in early October 2021. These restrictions imposed limits on the amount of weight claimant could carry and the amount of bending she could do. Claimant immediately informed the employer, but the employer will not return claimant to her position with restrictions.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work effective July 25, 2021.

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(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.

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.

Until October, claimant was on a leave of absence. She was not released to return to work after a non-work-related injury. She was unable to and unavailable for work through that time.

Inasmuch as the medical condition is not work-related and the treating physician has not released the claimant to return to work with or without restriction, she has not established her ability to work while still an employee of this employer. While she may be able to perform light work duties, the employer is not obligated to accommodate a non-work related medical condition, and since she has not been released to perform her full work duties, she is not considered able to or available for work.

DECISION:

The September 15, 2021 (reference 03) unemployment insurance decision is affirmed. The claimant is not able to work and available for work effective July 25, 2021. Benefits are withheld until such time as the claimant obtains a full medical release to return to work, offers her services to the employer, and no suitable, comparable work is available considering reasonable accommodation; or if she is involuntarily separated before that time.



Alexis D. Rowe
Administrative Law Judge

December 15, 2021
Decision Dated and Mailed

ar/mh