

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KATHRINE R HATFIELD
Claimant

CENTRAL IOWA KFC INC
Employer

APPEAL 18A-UI-03875-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 02/11/18
Claimant: Respondent (2)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

Central Iowa KFC, Inc. (employer) filed an appeal from the March 16, 2018, reference 01, unemployment insurance decision that allowed benefits based upon the determination Kathrine R. Hatfield (claimant) was medically able to and available for work effective February 11, 2018. After due notice was issued, a telephone conference hearing was held on April 20, 2018. The claimant participated. The employer participated through Area Coach Marshall Brandt. The Claimant's Exhibit A and the Employer's Exhibit 1 were admitted without objection.

ISSUE:

Was the claimant able to work, available for work, and actively and earnestly seeking work effective February 11, 2018?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a Shift Supervisor beginning December 16, 2015. She became sick with pneumonia, a non-work related illness, in January 2018 and was unable to work. Effective February 15, 2018, the claimant's doctor released her to work part-time with a 25 pound lifting restriction and a requirement that she wear a mask covering her nose and mouth. The employer determined it could not return her to work because she works with food. On March 2, 2018, the claimant's doctor altered her restrictions by removing the mask requirement. On March 11, 2018, the employer and the claimant signed an agreement that she would return to work part-time as an hourly Team Leader. As of the date of the hearing, the claimant has not been returned to work full-time without restrictions.

The claimant filed her claim for benefits effective February 11, 2018, with a reopen date of February 25, 2018. She filed one weekly continued claim for benefits for the week ending March 3, 2018. The claimant was not able to work full-time during that week and she did not conduct any job searches as she is still employed with the employer. The claimant's base period begins October 1, 2016 and ends on September 30, 2017. The wage credits earned during the base period was for full-time work.

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, and made an earnest search for work for the period in question. Benefits are denied.

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. 871-24.22(2) provides, in relevant part:

Benefit 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.

a. Shift restriction. The individual does not have to be available for a specific shift. If an individual is available for work on the same basis on which the individual's wage credits were earned and if after considering the restrictions as to hours of work, etc., imposed by the individual there exists a reasonable expectation of securing employment, then the individual meets the requirement of being available for work.

...

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

Iowa Admin. Code r. 871-24.23 provides, in relevant part:

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.

...

(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.

An individual claiming benefits has the burden of proof that she is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. As the claimant's medical condition is not work-related and the treating physician has not released the

claimant to return to work without restriction, she has not established her ability to work while still an employee of the employer effective February 11, 2018. While she may be able to perform light work duties on a reduced schedule, the employer is not obligated to accommodate a non-work related medical condition for purposes of unemployment insurance benefits, and since she is not released to perform her full work duties or work her normal full-time hours, she is not considered able to or available for work. Benefits are denied until such time as the claimant obtains a full medical release to return to work unless she is involuntarily separated before that time.

DECISION:

The March 16, 2018, reference 01, unemployment insurance decision is reversed. The claimant is not able to work and available for work effective February 11, 2018. Benefits are denied until such time as the claimant obtains a full medical release to return to work unless she is involuntarily separated before that time.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn