

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AMBER M POLSON
Claimant

APPEAL 21A-UI-19950-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 07/04/21
Claimant: Appellant (4)**

Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

On September 8, 2021, claimant Amber M. Polson filed an appeal from the August 31, 2021 (reference 03) unemployment insurance decision that denied benefits based on a determination that claimant was unable to work effective July 4, 2021, due to injury. The parties were properly notified of the hearing. A telephonic hearing was held at 2:00 p.m. on Friday, October 29, 2021. The claimant, Amber M. Polson, participated. No exhibits were offered or admitted into the record. The administrative law judge took official notice of the administrative record.

ISSUE:

Is the claimant able to work and available for work?

FINDINGS OF FACT:

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

Claimant opened her claim for unemployment insurance benefits effective July 4, 2021, after a separation from Mercy North Outpatient Lab. During her employment, claimant worked from 11:00 a.m. until 5:30 p.m.

During her first two weeks of unemployment, claimant was not available for work because she was on vacation. Claimant properly reported that she was not available for work when she filed her weekly continued claims for benefits for the weeks ending July 10 and July 17.

Beginning effective July 18, 2021, claimant became available for work and began an active work search. Claimant was hoping to return to working in a lab. She also looked for retail positions in stores such as Menard's, as those positions compensated employees well.

During the time that claimant was filing for unemployment insurance benefits, she was also attending an outpatient treatment program. This program offered sessions during the morning (9:00 a.m. until 12:30 p.m.) or in the evening (6:00 p.m. until 8:00 p.m.). Claimant attended the morning sessions while she was searching for work. While claimant was unemployed, she also completed home improvement projects, finished paperwork, and spent time with her children.

Claimant filed for benefits for six weeks. Once she realized her claim was locked and she would not be receiving benefits, she stopped filing weekly continued claims.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was able to work and available for work effective July 18, 2021, until August 14, 2021.

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(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. 871-24.23(25) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(25) If the claimant is out of town for personal reasons for the major portion of the workweek and is not in the labor market.

In order to be eligible for benefits, an individual claiming benefits must be able to work, available for work, and actively and earnestly seeking work. In this case, claimant was not initially available for work, as she was on vacation for the first two weeks of her unemployment. Claimant is not eligible for benefits for the weeks ending July 10 and July 17.

Effective July 18, 2021, claimant returned from vacation and was available for work. She had no impediments to employment and was ready to accept work if an employer called her and offered her a job. She actively searched for work and completed at least two work searches each week for the four consecutive weeks that she filed for benefits after returning from her vacation. Accordingly, benefits are allowed from July 18, 2021, through the week ending August 14, 2021.

As discussed during the hearing, if claimant wishes to resume filing for unemployment insurance benefits, she can contact customer service or her local unemployment insurance office about reopening her claim. Claimant must be able to work, available for work, actively and earnestly seeking work, and otherwise eligible for benefits in order to receive unemployment insurance benefits.

DECISION:

The August 31, 2021 (reference 03) unemployment insurance decision is modified in favor of the claimant/appellant. Claimant is not able to work and available for work for the two-week period ending July 17, 2021. Benefits are withheld for those two weeks.

Claimant is able to work and available for work for the four-week period beginning July 18, 2021, and ending August 14, 2021. Benefits are allowed for that four-week period.



Elizabeth A. Johnson
Administrative Law Judge
Unemployment Insurance Appeals Bureau

November 17, 2021
Decision Dated and Mailed

lj/scn