

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SARA E HOGAN
Claimant

SDH EDUCATION WEST LLC
Employer

APPEAL 21R-UI-14388-AW-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 12/13/20
Claimant: Appellant (4)

Iowa Code § 96.5(1) – Voluntary Quitting
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:

Claimant filed an appeal from the February 9, 2021 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was scheduled for April 19, 2021. No hearing was held because appellant failed to participate in the hearing. On May 3, 2021, a default decision was issued dismissing the appeal (see Appeal 21A-UI-06223).

On May 7, 2021, claimant appealed to the Employment Appeal Board (EAB). On June 21, 2021, the EAB remanded this matter to the Appeals Bureau for a hearing on the merits. Upon remand, due notice was issued and a hearing was held on August 19, 2021 at 2:00 p.m. Claimant participated. Employer participated through Nicholas Bata, Executive Chef and General Manager. The parties waived ten days' notice of the issue of whether claimant is able to and available for work.

ISSUES:

Whether claimant's separation was a voluntary quit without good cause attributable to employer.
Whether claimant is able to and available for work.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began her employment as a full-time Cook with SDH Education West on August 15, 2015. Claimant last performed work for employer in March 2020. Claimant requested and was granted a leave of absence from work in March 2020 due to Covid-19. Claimant remains on the approved leave of absence and has not returned to work due to her concerns about Covid-19 and lack of childcare as a result of Covid-19. Claimant has not separated from her employment with SDH Education West.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes:

Iowa Code § 96.5(1) provides: An individual shall be disqualified for benefits, if the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

Claimant has no intention of severing her employment relationship with SDH Education West. Claimant has not quit or been discharged. Claimant remains employed with SDH Education West.

The next issue to be determined is whether claimant is able to and available for work. For the reasons that follow, the administrative law judge concludes:

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:

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.

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(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.

An individual claiming benefits has the burden of proof that he or she is able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

Claimant requested and was granted a leave of absence from work. While claimant may have valid reasons for her absence, she is still considered unable to and unavailable for work. Accordingly, claimant is not eligible for unemployment insurance benefits.

DECISION:

The February 9, 2021 (reference 01) unemployment insurance decision is modified in favor of appellant. Claimant has not separated from employment with SDH Education West. However, claimant is on a leave of absence and, thus, has not established that she is able to and available for work. Accordingly, benefits are denied until such time as claimant establishes that she is able to and available for work.



Adrienne C. Williamson
Administrative Law Judge
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Fax (515)478-3528

August 25, 2021
Decision Dated and Mailed

acw/ol

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>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.

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>.