

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JESSICA K PERRY
Claimant

MERCY PHYSICIAN SERVICES INC
Employer

APPEAL 21A-UI-09306-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/03/20
Claimant: Appellant (3)

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

STATEMENT OF THE CASE:

On March 29, 2021, the claimant, Jessica K. Perry, filed an appeal from the March 18, 2021 (reference 02) unemployment insurance decision that denied benefits based upon a determination that claimant was on a leave of absence effective January 24, 2021, and was ineligible for benefits. The parties were properly notified of the hearing. A telephonic hearing was held at 2:00 p.m. on Thursday, June 17, 2021, and was consolidated with the hearing for 21A-UI-09307-LJ-T. The claimant, Jessica K. Perry, participated. The employer, Mercy Physician Services, Inc., participated through Amanda Felton, HR Manager. No exhibits were offered or admitted. The administrative law judge took official notice of the administrative record.

ISSUES:

Is the claimant able to work 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 working for employer Mercy Physician Services, Inc., on October 20, 2014. Claimant is currently employed full time as an x-ray technician with the employer.

Claimant opened her claim effective May 3, 2020, because she tested positive for COVID-19. Claimant remained out of work for approximately five weeks due to this diagnosis.

Claimant tested positive for COVID-19 again in January 2021. According to the employer's records, claimant was off work from January 17, 2021, through February 6, 2021, and she returned to work on Monday, February 8, 2021. Claimant explained that after she tested positive, her children could not go back to school for fourteen days after they had been exposed to her, so she remained out of work for several weeks.

At the time of claimant's absences from the workplace, the employer had policies in place related to employees who tested positive for COVID-19. In order to return to work, an employee had to be fever-free for three days and also had to be released to return to work by the employer's Employee Health Center. The employer put those standards in place based on CDC and state guidelines.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was unavailable for work effective May 3, 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(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(1) provides:

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.

Iowa Admin. Code r. 871-24.23(10) provides:

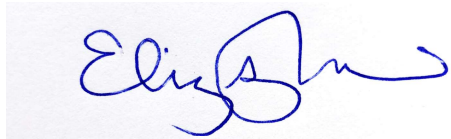
Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(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.

In order to be eligible for benefits, an individual must be able to work and available for work. Here, claimant was unable to work for several weeks in January and early February 2021, due to contracting COVID-19. She was on a continuous leave of absence, first because she had contracted COVID-19 and then because her children could not return to school. The employer had work available for the claimant, but claimant was not available to accept that work. The administrative law judge finds claimant was unavailable for work effective January 17, 2021. Benefits are withheld.

DECISION:

The March 18, 2021 (reference 02) unemployment insurance decision is modified in favor of the employer/respondent. Claimant was on a leave of absence and was unavailable for work effective January 17, 2021. Benefits are withheld



Elizabeth A. Johnson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

June 30, 2021
Decision Dated and Mailed

lj/kmj