

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TAMIA C WILSON
Claimant

10 ROADS EXPRESS LLC
Employer

APPEAL 23A-UI-10050-SN-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/24/23
Claimant: Appellant (4)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The claimant, Tamia C. Wilson, filed an appeal from the October 19, 2023, (reference 01) unemployment insurance decision that denied benefits effective September 24, 2023 based upon the conclusion she requested and was granted a leave of absence. The parties were properly notified of the hearing. A telephone hearing was held on November 8, 2023 at 11:00 a.m. The claimant participated. The employer participated through Human Resources Manager Carolann Gray.

ISSUES:

Was the claimant on an approved leave of absence?

Was the claimant able and available for work?

FINDINGS OF FACT:

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

The claimant began employment with the employer as a full-time night dispatcher from January 9, 2023. Her rate of pay in this role was \$23.69.

On August 15, 2023, the claimant informed a member of the leave of absence team that she was pregnant. The claimant asked if she could work from home. This request was denied on August 23, 2023. The claimant continued to perform her normal duties at work according to her existing schedule.

The claimant last worked for the employer on September 19, 2023.

On September 23, 2023, the claimant was hospitalized due to a diabetic attack. She was discharged from the hospital on September 24, 2023. The claimant informed the employer of the hospitalization. The leave of absence team required the claimant to provide a full release to return to work, a job description signed by that same medical provider, and a description of her diagnosis, so that the employer could provide accommodation, if necessary.

The claimant uses two clinics for health care. A perinatal clinic and a midwife clinic. The perinatal clinic does not have the scope of practice to provide a release for the claimant to return to work regarding symptoms unrelated to her pregnancy. The midwife clinic is the claimant's primary healthcare provider. She could not get an appointment there until October 26, 2023.

The claimant experienced diabetic symptoms such as sleepiness, nausea, stomach cramping, and diminished appetite until October 5, 2023. It took at least until that time to determine if she could manage it with her diet.

On October 20, 2023, the perinatal clinic provided information to the employer about what accommodations would need to be made after the baby was born.

On October 27, 2023, the claimant provided a release for her to return to work without restriction effective October 26, 2023.

The employer reports the claimant resigned on November 7, 2023, by email. The claimant disputes that she resigned on that day.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that the claimant was not able and available to work until the week ending November 4, 2023, because she did not receive a release to return to work without restriction until October 27, 2023.

Iowa Code section 96.4(3)a states:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. a. 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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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)(1) and (2) state:

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(1), (10) and (35) state:

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.

To be eligible for benefits, an individual claiming benefits must be able to work, available for work, and actively and earnestly seeking work.

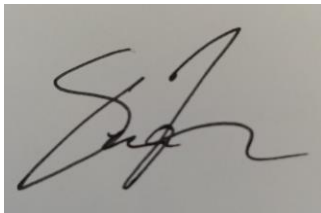
At the outset, the administrative law judge agrees with the claimant that she was not on a voluntary leave of absence, but the question of whether she was able and available for work does not end there.

In this case, the claimant had a diabetic attack that required hospitalization on September 22, 2023. The claimant continued having symptoms related to this condition until October 5, 2023, when she began to successfully manage the symptoms with her diet. The administrative law judge finds that for this first period, the claimant cannot establish she had these symptoms under control to meet her burden to show she was able to work. See Iowa Admin. Code r. 871-24.23(1).

The claimant did not receive a release to return to work without restriction until October 27, 2023. While the claimant notes she did not have active restrictions, the employer had a reason to be skeptical of her ability to work given she had been hospitalized for a diabetic attack on September 22, 2023. The claimant was also pregnant. A condition that by itself causes sleepiness is a serious concern for a job that is performed at night. The claimant acknowledged during her testimony that she was uncertain how this condition interacted with her pregnancy. This is particularly true given the claimant was asking for changes to her work prior to this event. Benefits are denied until the week ending October 28, 2023 because she had not yet obtained a full release. This is disqualifying under Iowa Admin. Code r. 871-24.23(35). Benefits are granted effective October 29, 2023, provided she is otherwise eligible for benefits.

DECISION:

The October 19, 2023, (reference 01) unemployment insurance decision is MODIFIED IN FAVOR OF THE APPELLANT. The claimant was able to work and available for work effective October 29, 2023, because she obtained a full release to return to work without restrictions. Benefits are denied prior to that because she was still either ill or under medical care and had not yet been released.



Sean M. Nelson
Administrative Law Judge II

November 13, 2023
Decision Dated and Mailed

SMN/jkb

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.