

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SHELLY L OBERMEIER
Claimant

APPEAL 21A-UI-22230-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

AII ACQUISITIONS
Employer

OC: 12/13/20
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

Shelly L Obermeier, the claimant/appellant, filed an appeal from the October 5, 2021, (reference 03) unemployment insurance decision that denied benefits as of August 22, 2021 because she was not willing to work the number of hours required in her occupation. The parties were properly notified about the hearing. A telephone hearing was held on December 14, 2021. Ms. Obermeier participated and testified. The employer participated by Susan Miller, human resources representative. The administrative law judge took official notice of the administrative record.

ISSUES:

Is Ms. Obermeier able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Obermeier began working for the employer on October 29, 2018. She works as a full-time assembler. Prior to November 1, 2021, Ms. Obermeier was paid \$20.70 per hour.

Ms. Obermeier is the legal guardian of her adult sibling. She requested to take time off work to care for her adult sibling because they are ill. Ms. Obermeier was not able to take Family Medical Leave Act (FMLA) leave because siblings are not covered under FMLA. The employer and Ms. Obermeier agreed that Ms. Obermeier would not work three days each week. She worked two days per week to maintain her health insurance. Ms. Obermeier was on leave from August 16, 2021 through October 8, 2021. Ms. Obermeier returned to full-time work as of October 10, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows Ms. Obermeier is not available for work from August 16, 2021 through October 8, 2021.

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.

Iowa Admin. Code r. 871-24.23(1) and (10) provide:

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.

(17) Work is unduly limited because the claimant is not willing to work the number of hours required to work in the claimant's occupation.

To be able to work, "[a]n 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." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871-24.22(1). "An evaluation of an individual's ability to work for the purposes of determining that individual's eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides." *Sierra* at 723. A person 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.

Ms. Obermeier is not able to and available for work from August 16, 2021 through October 8, 2021. Ms. Obermeier was on a leave of absence to care for her ill sibling. Ms. Obermeier did what she needed to do for her family. However, she was not available for work under Iowa law. Benefits are denied from August 16, 2021 through October 8, 2021.

DECISION:

The October 5, 2021, (reference 03) unemployment insurance decision is affirmed. Ms. Obermeier is not able to work from August 16, 2021 through October 8, 2021. Benefits are denied.



Daniel Zeno
Administrative Law Judge
Iowa Workforce Development
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

January 19, 2022

Decision Dated and Mailed

dz/abd