

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KAREN N GATES
Claimant

REM IOWA COMMUNITY SERVICES INC
Employer

APPEAL 21A-UI-21038-S2-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/01/21
Claimant: Appellant (4)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(10) – Able & Available – Availability Disqualifications

STATEMENT OF THE CASE:

On September 21, 2021, the claimant filed an appeal from the September 17, 2021, (reference 02) unemployment insurance decision that denied benefits based upon a finding that claimant was on a voluntary leave of absence. The parties were properly notified about the hearing. A telephone hearing was held on November 15, 2021. Claimant Karen N. Gates participated. Employer REM Iowa Community Services, Inc. did not register for the hearing and did not participate.

ISSUES:

Is the claimant able to and available for work?
Is the claimant on a voluntary 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 on December 8, 2020. Claimant works for employer as a full-time direct support specialist.

In May 2021, claimant suffered a grand mal seizure. Her doctor restricted claimant from driving for six months. Driving was one part of claimant's job duties, but it was not her only job duty. She was able to perform her other job duties and requested to continue to work in any capacity. Employer declined and placed claimant on a six-month leave of absence. Claimant had no other restrictions on her ability to and availability for work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work effective August 1, 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(1)a 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.

(1) Able to work. An 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.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

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.

For an individual to be eligible to receive benefits, she must be able to work, available for work, and actively seeking work as required by the unemployment insurance law. Iowa Code § 96.4(3). The burden is on the claimant to establish that she is able and available for work within the meaning of the statute. Iowa Code § 96.6(2); Iowa Admin. Code r. 871-24.22.

Claimant did not request a six-month leave of absence; she would have preferred to continue working. However, because claimant could not drive, employer required claimant to remain away from work. However, driving was only a small part of claimant's job duties, and she was able to and available for her remaining job duties or to perform office work. Because it was the employer's choice that claimant was removed from work and not claimant's choice, the administrative law judge finds that claimant was not on a voluntary leave of absence. Claimant

was otherwise able to and available for work. Benefits are allowed, provided she is otherwise eligible.

DECISION:

The September 17, 2021, (reference 02) unemployment insurance decision is modified in favor of the appellant/claimant. Claimant is able to and available for work for the week effective August 1, 2021. Benefits are allowed, provided claimant is otherwise eligible.



Stephanie Adkisson
Administrative Law Judge
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December 20, 2021
Decision Dated and Mailed

sa/kmj