

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DEANNA R MCBRIDE
Claimant

HY VEE INC
Employer

APPEAL 21A-UI-16308-AR-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/09/21
Claimant: Appellant (4)

Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

The claimant, Deanna R. McBride, filed an appeal from the July 21, 2021, (reference 03) unemployment insurance decision that denied benefits based upon a determination that claimant was not able to and available for work due to illness. The parties were properly notified of the hearing. A telephone hearing was held on September 15, 2021. Pursuant to notice, the hearing was consolidated with the hearing for appeal number 21A-UI-16307-AR-T. The claimant participated personally. The employer, Hy-Vee, Inc., participated through its hearing representative, Frankie Patterson, with testifying witness Mitch Worley. The administrative law judge took official notice of the administrative record.

ISSUE:

Is the claimant able to and available for work effective May 9, 2021?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as an assistant manager from August 17, 2011, until this employment ended on April 30, 2021, when she resigned.

Claimant contracted COVID-19 in October 2020. After two periods of leave, claimant returned to work in April 2021 with the restriction that she needed to take 10-to-15-minute breaks every couple of hours. Initially, she received the breaks she needed. However, the second week after she returned to work, she began having difficulty taking her breaks. Though she discussed the issue with her supervisor, Erica Powell, the situation did not improve.

On April 30, 2021, claimant concluded that she needed to quit employment. She verbally told supervisors Chad Bowlman and Jason Buswitz that, due to her health, she needed to take time off, and she resigned her employment effective immediately. Claimant's doctor did not explicitly tell her she needed to quit her employment. The doctor did state that if claimant and her husband could afford it, claimant would benefit from additional time off work in order to fully recover.

After claimant resigned her employment, she continued to see her doctor regularly. Her doctor was aware that claimant had resigned her employment with the employer. In early July 2021, claimant and her doctor agreed that claimant was likely able to return to work without restrictions.

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 July 4, 2021.

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(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(35) provides:

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

(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 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. Emp't Appeal Bd.*, 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*, 508 N.W.2d at 723. The court in *Gilmore v. Emp't Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004), noted that "[i]nsofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

Claimant filed weekly claims beginning the week of May 9, 2021, and continuing through the week of September 5, 2021.

Since the employment ended on April 30, 2021, claimant is no longer obligated to return to employer upon her medical release to offer her services. At that point, her ability to work is not measured by the job she held most recently, but by standards of her education, training, and work history. Claimant's doctor released her to work in early July 2021. Accordingly, claimant is considered able to and available for work as of July 4, 2021. However, prior to that time, the evidence indicates that claimant had not been released to work by her physician, and she was not able to and available for work from May 9, 2021, through the week of June 27, 2021.

Claimant is on notice that she must conduct at least two work searches per week and file weekly claims in order to retain eligibility for benefits.

DECISION:

The July 21, 2021, (reference 03) unemployment insurance decision is modified in favor of the appellant. The claimant is able to work and available for work effective July 4, 2021. Benefits are allowed as of that time, provided she is otherwise eligible. Claimant is not able to and available for work between the weeks of May 9, 2021, and June 27, 2021. Benefits are withheld for that period.



Alexis D. Rowe
Administrative Law Judge

September 21, 2021
Decision Dated and Mailed

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