

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ROSAIMY RODRIGUEZ
Claimant

KERRY INC
Employer

APPEAL NO. 21A-UI-16233-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/28/21
Claimant: Appellant (2R)

Iowa Admin. Code ch. 871 r. 24.23(10) – Leave of Absence
Iowa Code § 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated July 16, 2021 reference 01, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on September 14, 2021. Claimant participated personally. Employer failed to respond to the hearing notice and did not participate. Interpretive services were provided by CTS Language Link.

ISSUE:

Whether claimant is able and available for work?
Whether claimant is on an approved leave of absence?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant worked as a full time employee for employer until the time employer shut down its business.

Claimant was informed in early March 2021 that employer was closing its business. As claimant had unused vacation time accrued, she asked for the last two weeks of work, from March 13-26 off from work. She did not work the last two weeks, and there was no employment after claimant finished her vacation.

At all times after she returned from vacation claimant was able and available for work. Claimant was never on a leave of absence.

REASONING AND CONCLUSIONS OF LAW:

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.

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".

Inasmuch as the claimant was able and available to return to work after finishing her vacation on March 26, 2021, the claimant has established the ability to work. Benefits shall be allowed effective March 26, 2021, provided claimant meets all other eligibility requirements.

DECISION:

The decision of the representative dated July 16, 2021, reference 01 is reversed. Claimant is eligible to receive unemployment insurance benefits, effective March 26, 2021, provided claimant meets all other eligibility requirements. This matter will be remanded to the fact finder for determination of the separation issue.



Blair A. Bennett
Administrative Law Judge

September 21, 2021
Decision Dated and Mailed

bab/mh