

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**KERI N DILLON**  
Claimant

**PLEASANT MANOR CARE CTR**  
Employer

**APPEAL 21A-UI-07773-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/03/20**  
**Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Able to and Availability for Work  
Iowa Admin. Code r. 871-24.23(10) – Leave of Absence

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the March 9, 2021 (reference 01) unemployment insurance decision that denied benefits to the claimant based on a leave of absence. The parties were properly notified about the hearing. A telephone hearing was held on June 29, 2021 following due notice. Claimant participated personally. The employer did not participate. Claimant's Exhibits A, B and C were admitted. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

**ISSUES:**

Was the claimant able to and available for work?  
Was the claimant on an approved leave of absence?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant has worked for employer since October of 2018. She is still employed to date. She works full-time as a registered nurse at the employer's care center. She filed an original claim for unemployment insurance benefits funded through the State of Iowa on May 3, 2020. From May 3, 2020 through August 8, 2020, the claimant was ill and unable to work due to COVID-19 like symptoms. Her medical provider advised her that she needed to be off work and Family and Medical Leave Act (FMLA) leave was approved for her during that time period. Claimant returned to work full-time on or about August 15, 2020. No Federal Pandemic Unemployment Assistance (PUA) application has been filed to date.

**REASONING AND CONCLUSIONS OF LAW:**

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", subparagraph (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) 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.

b. Interpretation of ability to work. The law provides that an individual must be able to work to be eligible for benefits. This means that the individual must be physically able to work, not necessarily in the individual's customary occupation, but able to work in some reasonably suitable, comparable, gainful, full-time endeavor, other than self-employment, which is generally available in the labor market in which the individual resides.

Iowa Admin. Code r. 871-24.22(2) 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.

(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) provides:

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.

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.

Iowa Admin. Code r. 871-24.23(10) provides:

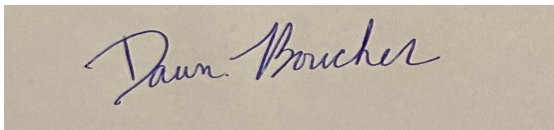
Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(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.

The burden is on the claimant to establish that she is able to work and available for work within the meaning of the statute. Iowa Code § 96.6(2); Iowa Admin. Code r. 871-24.22. The claimant was not working due to her being ill with COVID-19 like symptoms from May 3, 2020 through August 8, 2020. She returned to work on or about August 15, 2020. As such, the claimant has failed to establish that she was able to and available for work pursuant to Iowa law effective May 3, 2020. Benefits are denied effective May 3, 2020.

**DECISION:**

The March 9, 2021 (reference 01) unemployment insurance decision is affirmed. The claimant was on a voluntary leave of absence and was not able to work and available for work effective May 3, 2020. Unemployment insurance benefits funded by the State of Iowa are denied until such time claimant is able to and available for work.

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Dawn Boucher  
Administrative Law Judge

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July 9, 2021  
Decision Dated and Mailed

db/kmj

**Note to Claimant**

- This decision determines you are not eligible for regular unemployment insurance benefits funded by the State of Iowa under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. If you do not qualify for regular unemployment insurance benefits funded by the State of Iowa under state law, you may qualify for benefits under the Federal Pandemic Unemployment Assistance (“PUA”) section of the Coronavirus Aid, Relief, and Economic Security Act (“Cares Act”) that discusses eligibility for claimants who are unemployed due to the Coronavirus.
- You will need to apply for PUA to determine your eligibility under the program. For additional information on how to apply for PUA go to: <https://www.iowaworkforcedevelopment.gov/pua-information>. If you have applied and have been approved for PUA benefits, this decision will **not** negatively affect your entitlement to PUA benefits.

**ATTENTION:** On May 11, 2021, Governor Reynolds announced that Iowa will end its participation in federal pandemic-related unemployment benefit programs effective June 12, 2021. The last payable week for PUA in Iowa will be the week ending June 12, 2021. PUA claims may be backdated prior to June 12, 2021 depending on eligibility requirements. Additional information can be found at: <https://www.iowaworkforcedevelopment.gov/COVID-19>