

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JOANNE M FUHS
Claimant

DECKER TRUCK LINE INC
Employer

APPEAL NO. 21A-UI-23173-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 08/29/21
Claimant: Respondent (1)**

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

The *employer* filed a timely appeal from the October 10, 2021, reference 03, decision that denied benefits effective August 29, 2021, based on the deputy's conclusion that the claimant requested and was granted a leave of absence, was voluntarily unemployed, and was not available for work within the meaning of the law. After due notice was issued, a hearing was held on December 9, 2021. Claimant, Joanne Fuhs, participated. Courtney Bachel represented the employer. Exhibits 1 and 2 were received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO and DBRO.

ISSUES:

Whether the claimant was able to work and available for work during the week that ended September 4, 2021.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant, Joanne Fuhs, is employed by Decker Truck Line, Inc. as a full-time Accounts Receivable employee. Her usual work hours are 8:00 a.m. to 5:00 p.m., Monday through Friday. The claimant began her employment on Monday, August 23, 2021. On that day, the claimant began to have symptoms consistent with COVID-19, which the claimant describes as symptoms similar to a common cold. On August 24, 2021, the claimant was tested for COVID-19 at a local health care center and tested negative. The provider advised the claimant to quarantine 14 days from the onset of symptoms pursuant to Centers for Disease Control (CDC) guidelines. The claimant was again tested for COVID-19 on August 26, 2021 and tested positive. The claimant's boyfriend also tested positive for COVID-19. Though the claimant was feeling some symptoms of illness, she felt well enough to work.

The claimant promptly notified the employer's human resources personnel of her symptoms and of her COVID-19 test results. Pursuant to the employer's COVID-19 policy, the employer advised the claimant to remain off work for 10 days. But for the COVID-19 symptoms and positive test, the employer would have had the claimant's usual work available. The claimant returned to work on Tuesday, September 7, 2021, the day after the Labor Day holiday. The

employer did not provide, and the claimant did not receive, compensation for the claimant's time away from work.

The claimant established an original claim for benefits that was effective August 29, 2021. Decker Truck Line, Inc. is not a base period employer and, therefore, is not subject to being assessed for benefits in connection with the August 29, 2021 original claim. Another employer account, M. H. Eby, Inc., is the account at risk of being assessed for benefits in connection with the claim. The claimant made a weekly claim for the week that ended September 4, 2021 and then discontinued her claim in connection with her return to full-time employment.

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", 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:

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), (10) and (35) 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.

...

(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.

...

(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 Code section 96.1A(37) provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

If a claimant individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. Iowa Code section 96.7(2)(a)(2)(a).

The claimant did not meet the availability requirement set forth in Iowa Code Section 96.4(3) and, therefore, is not eligible for unemployment insurance benefits for the week that ended September 4, 2021. During that week, the claimant was ill with a diagnosed communicable disease, COVID-19, and was under a period of quarantine pursuant to the advice of her health care provider. The claimant was not temporarily laid off within the meaning of the law during the week that ended September 4, 2021. Regardless of the employer's policy, or whether the employer viewed the situation as a temporary layoff, the claimant was not available for work within the meaning of the law during the week in question. Benefits are denied for the week that ended September 4, 2021.

DECISION:

The October 10, 2021, reference 03, is affirmed. The claimant was not available for work within the meaning of the law during the week that ended September 4, 2021 and is not eligible for benefits for that week.



James E. Timberland
Administrative Law Judge

January 12, 2022
Decision Dated and Mailed

jet/kmj