

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LENNETTE E HARMON
Claimant

KWIK SHOP INC
Employer

APPEAL 20A-UI-04908-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/22/20
Claimant: Appellant (1)

871 IAC 24.23(10) – Voluntary Leave of Absence
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Availability Disqualifications

STATEMENT OF THE CASE:

Lennette Harmon (claimant) appealed a representative's May 22, 2020, decision (reference 02) that denied benefits because she was on an approved leave of absence with Kwik Shop (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 24, 2020. The claimant participated personally. The employer participated by Amy Hunt, District Manager. The administrative law judge took official notice of the administrative file.

ISSUES:

The issue is whether the claimant is available for work and whether she 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 that: The claimant performed services for the employer from February 4, 2019, through March 13, 2020, as a full-time cashier. On March 30, 2020, the claimant's physician wrote her a note excusing her from work due to Covid-19. The claimant has not been released to return to work. The employer considers her to be still employed and on a leave of absence. The claimant filed for unemployment insurance benefits with an effective date of March 22, 2020.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the claimant is not able and available for work.

Iowa Admin. Code r. 871-24.23(1) (10) provide:

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.

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.

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). When employees are unable to perform work due to a medical condition, they are considered to be unavailable for work. In this case, the claimant's physician indicated she is unable to work. Before the note was issued, after her last shift on March 13, 2020, the claimant stopped working due to her condition

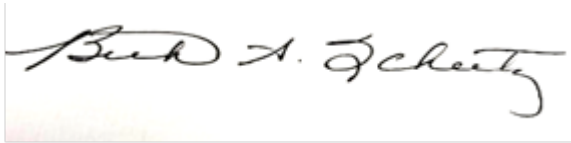
The employer agreed to allow the claimant time off for her medical condition. The claimant has not established she is able to and available for work, even under the United States Department of Labor's guidance to flexibly interpret this requirement. See Unemployment Insurance Program Letter No. 10-20. The claimant is considered to be on a leave of absence due to her medical condition and is not available for work. Therefore, the claimant is not eligible for regular, state-funded unemployment insurance benefits as of March 22, 2020.

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, she may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed. The claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

DECISION:

The May 22, 2020, (reference 02) unemployment insurance decision is affirmed. The claimant is not able to work and available for work effective March 22, 2020. Regular unemployment insurance benefits funded by the state of Iowa are denied until such time as the claimant is able to and available for work.

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. 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. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.



Beth A. Scheetz
Administrative Law Judge
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July 2, 2020
Decision Dated and Mailed

bas/scn