

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROSE A AMES
Claimant

ALANIZ LLC
Employer

APPEAL 19A-UI-01917-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/08/18
Claimant: Appellant (4R)

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.4(3) – Able and Available
Iowa Admin. Code r. 871-24.23(10) – Availability Disqualifications – Leave of Absence

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 1, 2019, (reference 05) unemployment insurance decision that denied benefits based upon claimant's availability for work. The parties were properly notified about the hearing. A telephone hearing was held on March 20, 2019. Claimant participated. Employer participated through human resources/operations manager Sandra Snyder, human resources generalist Dixie Crane, and production supervisor Rodney Stewart.

ISSUES:

Is the claimant eligible for partial benefits?
Is the claimant able to work and available for work effective August 5, 2018?
Was 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 began working for employer on April 18, 2016. Claimant last worked as a full-time MBO operator.

Claimant was temporarily laid off due to lack of work during the one week ending August 11, 2018. Claimant had previously requested and was approved for one day of Family and Medical Leave Act (FMLA) leave that week.

Claimant worked during the two weeks ending August 25, 2018. Any work claimant missed during those two weeks was due to claimant's non-work related medical condition or for other personal reasons. Work was available.

Claimant did not work at all during the four weeks ending September 22, 2018, due to a non-work related medical condition. Claimant had a lifting restriction on her left hand. Employer

would not accommodated the restriction as the injury was not work related. Claimant received short-term disability benefits during this time period.

Claimant returned to work and worked during the four weeks ending October 20, 2018. Work was available. Any time missed was due to claimant's non-work related medical condition.

Claimant's last day of work for employer was October 19, 2018. Claimant was off work after that point for a non-work related medical condition.

Claimant was not released to return to work prior to her separation from employment in December 2018 or January 2019. Iowa Workforce Development Benefits Bureau has not issued an initial decision on whether claimant's separation from employment disqualifies her from receiving unemployment insurance benefits.

Claimant was released to return to work on January 14, 2019.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.19(38) 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.

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. 871-24.23(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.

Claimant was laid off due to lack of work during the one week ending August 11, 2018, and was eligible for benefits that week. Even though claimant had one day of prescheduled FMLA leave that week, it was a temporary layoff and therefore claimant was not required to be able to and available for work that week. Claimant is eligible for benefits that week.

Claimant is not eligible for benefits from August 12, 2018, through January 14, 2019. The work claimant missed during that time period was due to her own personal medical conditions, which employer is not required to accommodate pursuant to unemployment law. Employer had work available for claimant up until her employment ended. Even after claimant's employment ended, she was not released to return to work until January 14, 2019. Therefore, claimant is ineligible for benefits during the time period from August 12, 2018, through January 14, 2019.

DECISION:

The March 1, 2019, (reference 05) unemployment insurance decision is modified in favor of appellant. The claimant was temporarily laid off and eligible for benefits during the one week ending August 11, 2018. Claimant is considered not able to and/or available for work from August 12, 2018, through January 14, 2019. Benefits are denied during that time period. Benefits are allowed after January 14, 2019, provided claimant is otherwise eligible.

REMAND:

The issue of whether claimant's separation of employment with employer disqualifies her from receiving unemployment insurance benefits is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Christine A. Louis
Administrative Law Judge
Unemployment Insurance Appeals Bureau
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Decision Dated and Mailed

cal/scn