

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JENNIFER BARKER
Claimant

MERCY MEDICAL CENTER-CLINTON INC
Employer

APPEAL 20A-UI-16106-SN-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Appellant (2)

Iowa Code § 96.4(3) – Ability 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 November 17, 2020, (reference 01) unemployment insurance decision that denied benefits based upon the conclusion she requested and was granted a leave of absence effective March 29, 2020. The parties were properly notified of the hearing. A telephone hearing was held on March 9, 2021. The claimant participated. The employer did not participate. The administrative law judge took official notice of the agency records.

ISSUE:

Was the claimant able to work and available for work for the week ending March 29, 2020?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant, Jennifer Barker, was hired as a full time registered nurse for the employer, Mercy Medical Center Clinton, Inc., in September 2016. The claimant worked a set schedule Monday through Friday. The claimant occasionally received on call assignments beyond her 40 hour work week.

On or about March 29, 2020, Operation Room Director Ben Summers told the claimant she was to call in to see if she was scheduled to work until further notice because the number of clients undergoing surgery had declined significantly.

The claimant confirmed her earnings as described in the administrative records, which are outlined below:

For the week ending April 4, 2020, the claimant earned \$300.

For the week ending April 4, 2020, the claimant earned \$300.

For the week ending April 11, 2020, the claimant earned \$0.

For the week ending April 18, 2020, the claimant earned \$0.

For the week ending April 25, 2020, the claimant earned \$200.

For the week ending May 2, 2020, the claimant earned \$210.

On May 5, 2020, the operating room employees were called back to work reduced, but regularly scheduled hours.

The claimant separated from employment in the last week of November or first week of December 2020. The claimant did not make weekly claims during this period.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was able to work and available for work effective March 29, 2020. Benefits are granted.

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(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.

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

Benefit 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 provides:

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

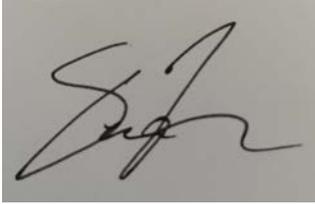
(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

An individual claiming unemployment insurance benefits has the burden of proof that she is able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

The claimant did not request a leave of absence. She was furloughed due to lack of work. Benefits are granted.

DECISION:

The November 17, 2020, (reference 01) unemployment insurance decision is reversed. The claimant was able to work and available for work effective March 29, 2020. Benefits are granted.

A rectangular box containing a handwritten signature in black ink. The signature is stylized and appears to read 'Sean M. Nelson'.

Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

March 11, 2021
Decision Dated and Mailed

smn/scn