

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**ABBIE M GILSON**  
Claimant

**KWIK TRIP INC**  
Employer

**APPEAL 20R-UI-12116-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/05/20**  
**Claimant: Appellant (3)**

Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions  
Iowa Admin. Code r. 871-24.23(10) – Able & Available – Leave of Absence

**STATEMENT OF THE CASE:**

On July 20, 2020, Abbie Gilson (claimant) filed an appeal from the July 13, 2020, reference 01, unemployment insurance decision that denied benefits effective April 26, 2020, based upon the determination she was not able to and available for work. After due notice was issued, a telephone hearing was scheduled to be held on September 3, 2020. The claimant did not register for the hearing and a default decision was issued on September 4. On or about September 18, the claimant's reschedule request, mailed prior to the hearing, was received and reviewed by agency representatives.

The claimant appealed the default decision to the Employment Appeal Board (EAB) who remanded the case for another hearing. After due notice was issued, a telephone hearing was held on November 9, 2020. The claimant participated. The employer participated through Randy Klang, Store Leader. No exhibits were offered into the record.

**ISSUE:**

Was the claimant able to and available for work effective April 5, 2020?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began working for the employer on September 23, 2019. She initially filed her claim for benefits effective April 26, 2020. However, at the beginning of June, she contacted Iowa Workforce Development (IWD) and a representative backdated her claim to April 5.

The claimant did not work from April 5 through May 2 because she took an indefinite leave of absence. She lives with elderly relatives, and she wanted to minimize the chance of giving them COVID-19. The claimant contacted the employer the week of May 3 and said she was ready to return to work. She was aware she would not be back to full-time work until two weeks after contacting the employer due to when schedules are created and posted.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not able to and available for work effective April 5, 2020. Benefits are denied.

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, in relevant part:

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.

...

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

Iowa Admin. Code r. 871-24.23(10) provides, in relevant part:

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 benefits has the burden to prove that she is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. The claimant requested an indefinite leave of absence and was voluntarily unemployed. Accordingly, she is not eligible for unemployment insurance benefits.

**DECISION:**

The July 13, 2020, reference 01, unemployment insurance decision is modified in favor of the respondent. The claimant is not able to work and available for work effective April 5, 2020. Benefits are denied.



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Stephanie R. Callahan  
Administrative Law Judge

December 2, 2020  
Decision Dated and Mailed

src/scn

*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>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.