

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GERTRUD G SWORTS
Claimant

HY VEE INC
Employer

APPEAL 21A-UI-17133-AR-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/28/21
Claimant: Appellant (2R)

Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

The claimant, Gertrud G. Sworts, filed an appeal from the July 27, 2021, (reference 01) unemployment insurance decision that denied benefits based upon the determination that claimant was not able to and available for work due to illness. The parties were properly notified of the hearing. A telephone hearing was held on September 28, 2021. The claimant participated personally. The employer did not respond to the hearing notice and did not participate. Claimant's Exhibits A and B were admitted to the record. The administrative law judge took official notice of the administrative record.

ISSUE:

Was the claimant able to and available for work effective March 28, 2021?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began employment with the employer January 26, 2015. She remains employed as of the date of her hearing. She works part-time in the position of floral designer.

Claimant became ill with COVID-19 in January 2021. She did not work, with the exception of completing a few projects from home, until March 14, 2021, when she returned to work. Since returning to work on March 14, 2021, she has been working approximately one or two days per week. Until she was fully vaccinated against COVID-19, she expressed to the employer that she wished to work primarily from home. The record is unclear whether claimant's pattern of employment changed after she returned from her leave.

Whether claimant was partially unemployed upon her return to work in March 2021 has not been the subject of a determination by Iowa Workforce Development at this time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work effective March 28, 2021.

Iowa Code § 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.

To be able to work, "[a]n 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." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871-24.22(1). "An evaluation of an individual's ability to work for the purposes of determining that individual's eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides." *Sierra* at 723. The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that "[i]nsofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

By the time claimant filed her claim for unemployment benefits, she had returned to work performing the same duties as prior to her illness, indicating that she was able to and available

for work. Claimant has demonstrated that she was able to and available for work effective March 28, 2021.

DECISION:

The July 27, 2021 (reference 01) unemployment insurance decision is reversed. The claimant is able to work and available for work effective March 28, 2021. Benefits are allowed, provided she is otherwise eligible.

REMAND:

The issue of whether claimant was totally, partially, or temporarily unemployed is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.



Alexis D. Rowe
Administrative Law Judge

October 04, 2021
Decision Dated and Mailed

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