

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARVELLA BEARDEN
Claimant

ABCM CORPORATION
Employer

APPEAL 21A-UI-14367-AR-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/04/2021
Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871—24.23(10) – Voluntary Leave of Absence

STATEMENT OF THE CASE:

On June 22, 2021, the claimant, Marvella Bearden, filed an appeal from the June 16, 2021, (reference 01) unemployment insurance decision that denied benefits based on the determination that claimant was on a voluntary leave of absence from employment with the employer, ABCM Corporation, effective April 4, 2021. The parties were properly notified about the hearing. A telephone hearing was held on August 18, 2021. Claimant participated personally. The employer participated through its hearing representative, Angie Hobscheidt. Jamie Harkema was present on the employer's behalf but did not testify. The administrative law judge took official notice of the administrative record.

ISSUES:

Is the claimant able to and available for work?
Is the 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 her employment on July 2, 2018. She remains employed with the employer as housekeeping and dietary as of the date of her hearing.

On March 23, 2021, claimant requested FMLA leave to undergo knee surgery. The employer approved the leave request and claimant began her leave on March 24, 2021. She remained on leave until June 10, 2021, when she returned to work with no restrictions. As of June 10, 2021, she returned to the same hours, wages, and position as before her leave.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work effective April 4, 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—24.23(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 requested and was granted a leave of absence. In doing so, claimant made herself unavailable for work during this time. Claimant is therefore not eligible for benefits during this period. As of June 10, 2021, she returned to work as before. Benefits are denied.

DECISION:

The June 16, 2021, (reference 01) unemployment insurance decision is affirmed. The claimant is not able to work and available for work effective April 4, 2021. Benefits are denied.



Alexis D. Rowe
Administrative Law Judge

August 23, 2021
Decision Dated and Mailed

ar/mh