

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ELIZABETH K COUNTS

Claimant

APPEAL 20A-UI-09760-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

RASHID PHARMACY PLC

Employer

OC: 05/10/20

Claimant: Appellant (2)

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 August 16, 2020, Elizabeth K. Counts (claimant) filed an appeal from the August 11, 2020, reference 01, unemployment insurance decision that denied benefits effective May 10, 2020, based upon the determination she was on an approved leave of absence from Rashid Pharmacy PLC (employer) and was not able to and available for work. After due notice was issued, a telephone hearing was held on September 29, 2020. The claimant participated. The employer participated through Angie Miller, Pharmacy Manager. The Claimant's Exhibits A through C were admitted into the record.

ISSUE:

Was the claimant able to and available for work effective May 10, 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 November 5, 2015, as a part-time Pharmacy Tech reporting to Angie Miller, Pharmacy Manager. On January 29, 2020, the claimant requested a leave of absence to care for her husband who had been in an accident. The employer granted her the time off. On May 12, the claimant notified the employer she was able to return to work. The employer did not have any work for her until September 14, when the claimant returned to work. The claimant did not have any impediments to working between May 12 and September 14.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was able to and available for work between May 10 and September 12, 2020. Benefits are allowed, provided she meets all other eligibility requirements.

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)j 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.

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.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

An individual claiming benefits has the burden to prove that she is able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. The claimant was on an indefinite approved leave of absence. She notified the employer on May 12 that she

was able to return to work. The employer did not have work for her at that time and did not reemploy her until September 14. The claimant did not have any other impediments to working between May 12 and September 14. The claimant has established that she was able to and available for work effective May 10. Benefits are allowed, provided she is otherwise eligible.

DECISION:

The August 11, 2020, reference 01, unemployment insurance decision is reversed. The claimant was able to and available for work effective May 10, 2020. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



Stephanie R. Callahan
Administrative Law Judge

September 30, 2020
Decision Dated and Mailed

src/scn