

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JACQUELINE LEE

Claimant

THE UNIVERSITY OF IOWA

Employer

APPEAL 17A-UI-03662-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/05/17

Claimant: Appellant (1R)

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

Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

Iowa Admin. Code r. 871-24.23(10) – Availability Disqualifications – Leave of Absence

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 24, 2017, (reference 03) unemployment insurance decision that denied benefits based upon the claimant not being able and available for work due to an injury. The parties were properly notified about the hearing. A telephone hearing was held on April 27, 2017. The claimant participated personally. The employer participated through Mary Eggenburg, benefits specialist. Joanne Higgens, human resources manager, testified. Claimant Exhibit A was admitted into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the claimant able to work and available for work effective March 5, 2017?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was last employed full-time as a custodian until January 24, 2017, when she was placed on a leave of absence in response to a January 17, 2017 work related injury to her knee. The claimant opened and established an unemployment claim while she was on a leave of absence, with an effective date of March 5, 2017. The claimant then voluntarily initiated separation with the employer, effective March 13, 2017. That separation and the receipt of vacation pay, have not yet been determined at the claims level.

The claimant remains under medical care, which includes use of crutches, and no prolonged standing, no lifting, bending or squatting. The claimant was unable to perform her job duties with these restrictions and for a period of time, tried applying for positions with Hy-Vee, Kum-n-Go, Goodwill, Gordmans and Walmart, in cashier and stocking roles. The claimant acknowledged she cannot perform the jobs for which she is applying, given her existing medical restrictions. The claimant next visits her physician on May 16th. The claimant has since

discontinued applying for jobs because she is moving next week to Laveen, Arizona, to live with family.

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.

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(2)j(1), (2) 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.

(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.

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

(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.

For an individual to be eligible to receive benefits, he must be able to work, available for work, and actively seeking work as required by the unemployment insurance law. Iowa Code § 96.4-3. The claimant has the burden to show he is able to work, available for work, and earnestly and actively seeking work. 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)).

The claimant was on a mutual leave of absence through March 13, 2017, until the claimant initiated the separation from the employer. From March 5 through March 13, 2017, the claimant would not be considered able and available for work, based upon being on the leave of absence. Iowa Admin. Code r. 871-24.23(10). Since the employment ended on March 13, 2017, the claimant is no longer obligated to return to employer upon her medical release to offer her services. At that point, her ability to work is not measured by the job she held most recently, but by standards of her education, training, and work history. The claimant acknowledged she has applied for jobs such as cashier and stocker, which are not within the restrictions imposed by her doctor. The claimant is currently under medical care for a work related injury, and has restrictions including crutches, no lifting, bending or squatting, or prolonged standing. The positions for which the claimant has applied cannot accommodate those restrictions. Based on the evidence presented, she is not considered able to work even if she cannot return to a job as most recently performed for the employer. Further, the claimant has since discontinued her job search altogether, as she is moving to Laveen, Arizona next week. In this case, the evidence

fails to establish the claimant is able to and available for work as defined by the unemployment insurance law. Benefits are denied, effective March 5, 2017.

DECISION:

The unemployment insurance decision dated March 24, 2017, (reference 03), is affirmed. The claimant is not eligible to receive unemployment insurance benefits effective March 5, 2017.

REMAND: The issues of permanent separation (effective March 13, 2017) and receipt of vacation pay, as delineated in the findings of fact, is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/rvs