

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**CASANDRA ANDRADE**  
Claimant

**KWIK TRIP INC**  
Employer

**APPEAL 21A-UI-00215-SN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/16/20**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the November 16, 2020, (reference 02) unemployment insurance decision that denied benefits based upon not being able to and available for work effective August 16, 2020. After due notice was issued, a telephone conference hearing was scheduled to be held on February 4, 2021. Claimant participated. The employer participated through Store Leader Malissa Powers Cruz. Exhibits A and B were admitted into the record. The administrative law judge took official notice of the administrative records.

**ISSUE:**

Was the claimant able to work, available for work effective August 16, 2020?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant filed for unemployment with an effective date of August 16, 2020. The claimant's weekly benefit amount is \$605.00.

The claimant, Casandra Andrade, began employment with the employer, Kwik Trip, as a full-time retail coworker on April 18, 2017. The claimant's regular full-time schedule is 38 hours per week. The claimant's base hourly wage is \$13.52. The claimant received an overnight incentive of \$2.00 for those shifts.

The employer has a Covid19 spread infection mitigation practice that requires employees to quarantine for 14 days if they have been in close contact with someone who has tested positive for Covid19.

On August 16, 2020, the claimant reported to Store Leader Evelyn Hackett at the Center Street Quick Star that she had been in close contact with her brother on August 12, 2020 and he had subsequently tested positive for Covid19. Ms. Hackett told her that she could not return until she obtained a negative Covid19 test result.

On August 17, 2020, the claimant received a Covid19 test. At this time, the claimant was experiencing a low temperature fever and felt ill. She could not perform her duties at this time.

On August 18, 2020, the claimant's symptoms subsided.

The claimant used nine hours of paid time off for shifts on August 17, August 18, and August 19, 2020. The administrative record shows she received \$135.00 for the week ending August 22, 2020.

On August 20, 2020, the claimant received a negative Covid19 test result. The claimant informed Ms. Powers Cruz of her negative test result. At that time, Ms. Powers Cruz told the claimant she could not return until August 26, 2020.

The claimant provided a copy of a doctor's note written by an agent of the McFarland Clinic on August 21, 2020. It states the claimant received a negative Covid19 test result on August 14, 2020. Despite the negative result, the note stated the claimant should quarantine for 14 days from the date of exposure on August 12, 2020 to return on August 26, 2020. (Exhibit A)

On August 26, 2020, the claimant returned to work. The claimant felt extremely ill that day. She was running a fever. She took a Covid19 test on that date. The administrative record shows the claimant received \$135.00 for the week ending August 29, 2020.

On August 27, 2020, the claimant received a positive test result from this Covid19 test. The claimant provided a copy of the positive test result. (Exhibit B) The claimant sent the test result to Ms. Powers Cruz the positive test result. In response, Ms. Powers Cruz told the claimant she would need to obtain a doctor's note to return. Ms. Powers Cruz also told the claimant she would be paid her hourly wage of \$13.52 for hours she was scheduled in emergency pay. That same day, the claimant talked to her medical providers at McFarland Clinic about keeping the employer updated on her progress.

On September 11, 2020, the claimant returned to work her regularly scheduled hours. She brought with her a release to return to work from the McFarland Clinic.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant was not able and available effective August 16, 2020.

Iowa Code section 96.19(38) provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

One threshold issue to be determined is whether the claimant was totally, partially or temporarily unemployed for the weeks ending August 22, August 29, September 5, and September 12, 2020. To be partially unemployed for any given week, claimant must work less than 38 hours per week (claimant's regular full-time schedule) and earn less than \$621.00 (claimant's weekly benefit plus \$15.00). The claimant received less than \$621.00 for the weeks ending August 22, August 29, September 5, and September 12, 2020, so she is partially unemployed for these weeks.

The next issue to be determined is whether the claimant was able and available for the weeks in which she was partially unemployed.

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(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.

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

Iowa Admin. Code r. 871-24.23 provides:

**Availability disqualifications.** The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

**(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.

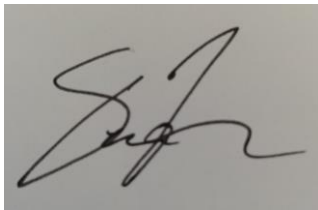
**(35)** Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

An individual claiming benefits has the burden of proof 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 is correct that she did not request a leave of absence for the weeks ending August 22, August 29, September 5, and September 12, 2020. However, the claimant was either ill or had not been released from her physician for these weeks. As a result, the claimant is disqualified under Iowa Admin. Code r. 871-24.23 (1) and (35). Benefits are denied.

**DECISION:**

The November 16, 2020, (reference 02) unemployment insurance decision is affirmed. Benefits are denied.



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Sean M. Nelson  
Administrative Law Judge  
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February 22, 2021  
Decision Dated and Mailed

smn/mh