

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BETTY A NEZERKA
Claimant

PRK WILLIAMS INC
Employer

APPEAL 18A-UI-06871-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/02/17
Claimant: Appellant (1R)

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:

Betty A. Nezerka (claimant) filed an appeal from the June 14, 2018, reference 03, unemployment insurance decision that denied benefits based upon the decision she was not able to and available for work effective May 20, 2018 because she requested and was granted a leave of absence from PRK Williams, Inc (employer). After due notice was issued, a telephone conference hearing was held on July 12, 2018. The claimant participated. The employer registered witnesses for the hearing but they were not available when called at the number provided.

ISSUE:

Was the claimant able to work, available for work, and actively and earnestly seeking work effective May 20, 2018?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began working for the employer July 9, 2017 as a 30-hour a week full-time Direct Support Professional (DSP). The claimant filed her original claim for benefits effective July 2, 2017 and an additional claim effective May 20, 2018.

The claimant worked her normal hours between May 20 and May 29. She reported the wages earned when making her weekly continued claims for unemployment insurance benefits. The claimant requested and was granted time off of work with the employer from June 1 through July 2. She has received vacation pay during her time off which she reported during each weekly continued claim.

On June 25, the claimant voluntarily quit her employment. Whether the claimant's separation qualifies her for unemployment insurance benefits has not yet been investigated or adjudicated by the Benefits Bureau.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not able to work and available for work effective May 20, 2018.

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 provides, in relevant part:

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.

(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, in relevant part:

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.

...

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

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 worked in her normal occupation and was removed from the labor market for the two-week period beginning May 20 through the week ending June 2. Effective June 2 through July 1, the claimant was on an approved leave of absence to be away from work. The claimant was not able to and available for work effective May 20 through the remainder of her claim year that ended June 30.

The claimant voluntarily quit her employment on June 25. Whether that separation is qualifying has not yet been investigated or adjudicated by the Benefits Bureau.

DECISION:

The June 14, 2018, reference 03, unemployment insurance decision is affirmed. The claimant is not able to work and available for work effective May 20, 2018. Benefits are denied.

REMAND:

The issue of whether the claimant's separation from the employer qualifies her for unemployment insurance benefits is remanded to the Benefits Bureau for an initial investigation and decision.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/rvs