

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALISON WELCHER
Claimant

**HENRY COUNTY SOLDIERS' AND
SAILORS' MEMORIAL HOSPITAL**
Employer

APPEAL 20A-UI-15459-SN-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/26/20
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

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 5, 2020, (reference 01) unemployment insurance decision that denied benefits based upon her not being able to and available for work for the week ending July 26, 2020. After due notice was issued, a telephone conference hearing was scheduled to be held on January 26, 2021. The claimant participated. The employer did not participate. Official notice was taken of the administrative records.

ISSUE:

Was the claimant able to work, available for work, and actively and earnestly seeking work the week ending July 26, 2020?

FINDINGS OF FACT:

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

The claimant, Alison Welcher, began working for the employer, Henry County Soldiers' and Sailors' Memorial Hospital, as a full time respiratory therapist on August 13, 2020. Prior to her leave of absence, the claimant worked 72 hours every two weeks on a varied schedule. The claimant's hourly rate of pay is \$22.90.

The employer as a Covid19 spread reduction policy which states if an employee has several Covid19 symptoms, then they are to report their symptoms to management, undergo Covid19 testing, and remain away from the employer's worksite for 10 days.

On July 26, 2020, the claimant began experiencing several symptoms similar to ones associated with Covid19 such as a cough, stuffy nose and a persistent headache. The claimant believed she had an ordinary cold, but she reported these symptoms to Infection Control Nurse Cindy Cotton. Consistent with the employer's policy, Ms. Cotton instructed the claimant to get a Covid19 test and to not report to work for 10 days.

On July 29, 2020, the claimant received Covid19 testing.

On August 3, 2020, the claimant received the results of her Covid19 test, which showed a negative result. That same day, the claimant informed Ms. Cotton of the results of the test. Ms. Cotton told the claimant that nevertheless she would not be able to return until August 7, 2020.

The claimant returned on August 7, 2020. The claimant could have worked for the entire period she was told to remain away from work despite her minor cold symptoms. The claimant did not make use paid time off or receive any other kind of compensation for the time she was away from work. The employer would have scheduled the claimant, if her circumstances did not fall within its Covid19 spread mitigation policy. The claimant would have worked during this period if the employer would have allowed her to report to work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work effective July 26, 2020.

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.

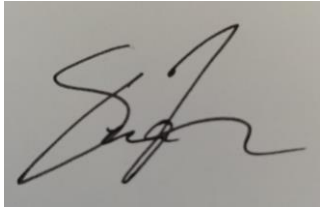
(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

The claimant 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.

From July 26, 2020 to August 3, 2020, the employer did not schedule the claimant to work because it believed she may have Covid19. The claimant experienced minor symptoms over that period of time which would not have impacted her ability to perform her duties. She also did not request a leave of absence. Accordingly, she is not eligible for unemployment insurance benefits.

DECISION:

The November 5, 2020, (reference 01) unemployment insurance decision is reversed. The claimant is able to work and available for work effective July 26, 2020. Benefits are granted.

A rectangular box containing a handwritten signature in black ink. The signature is stylized and appears to read 'S. Nelson'.

Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

February 11, 2021
Decision Dated and Mailed

smn/mh