

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JESSICA S SULLIVAN
Claimant

DANLEE CORP
Employer

APPEAL 24A-UI-05895-SN-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 05/19/24
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The claimant, Jessica S. Sullivan, filed an appeal from the June 14, 2024, (reference 02) unemployment insurance decision that denied benefits effective May 19, 2024, based upon the conclusion she lacked adequate transportation to be available for work. The parties were properly notified of the hearing. A telephone hearing was held on July 10, 2024, at 8:00 a.m. I informed District Manager Jerry Kampf that I would issue a default decision at 8:15 a.m. Later that day, the claimant informed the Appeals Bureau of her inability to participate due to a telecommunications outage. I reopened the record and scheduled a second hearing.

Another hearing was scheduled to occur on July 24, 2024, at 11:00 a.m. The claimant participated. The employer participated through District Manager Jerry Kampf. Exhibits 1, 2, and 3 were received into the record.

ISSUE:

Whether the claimant was able and available for work effective May 19, 2024?

FINDINGS OF FACT:

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

The claimant was employed by the employer as a kitchen clerk from October 19, 2022. The claimant worked 25 to 30 hours per week. Her rate of pay was \$11.00.

The claimant's immediate supervisor and boyfriend was Wade Sams. They lived together at 2009 W Fourth Avenue Apartment Four in Indianola, Iowa 50125 with two children under the age of eight. The claimant did not have a driver's license. This apartment is a few blocks away from the convenience store the claimant was working at, Indy 66 West at 2001 West Second Avenue in Indianola, Iowa 50125.

The claimant last worked for the employer on May 6, 2024. Later that night, the claimant and Mr. Sams broke up.

On May 7, 2024, Mr. Sams told Mr. Kampf that he had broken up with the claimant.

On May 8, 2024, Mr. Sams and another man went to the apartment he had shared with the claimant to retrieve his belongings. Both Mr. Sams and the claimant had a negative experience from that night.

On May 9, 2024, the claimant asked Mr. Kampf via text message if she could send a video to him of Mr. Sams breaking into her apartment to get his things. The claimant told Mr. Kampf via text message that she should have called the police over the altercation. The claimant said via text message that she felt unsafe being around Mr. Sams. In response, Mr. Kampf suggested that if she felt like she was not able to return to work of this, then he could find a position at another store. The claimant replied that she preferred to stay at her current store. The employer provided copies of these text messages. (Exhibit 3) Later that afternoon, the claimant said she had a conversation with Mr. Sams. She believed that she would be able to get the car back that they both used when they shared the apartment. (Exhibit 3) Mr. Kampf asked the claimant if she would be able to meet in his office the following morning. The claimant said she would not be able to because she did not have transportation.

On May 16, 2024, Mr. Kampf told the claimant that she needed to transfer to another store after the altercation on May 8, 2024. He offered her positions at Jiffy Express at 311 North Jefferson Way in Indianola, Iowa 50125 and 1202 North Jefferson Way in Indianola, Iowa 50125. These are roughly two miles away from the claimant's home. The claimant hung up and did not respond to further communications.

On May 24, 2024, the employer reasoned the claimant was not returning. It provided a copy of a form stating that is her separation date. (Exhibit 1)

Near the end of June 2024, one of the claimant's adult daughters has returned from college and has been able to provide childcare for the claimant's two minor children. The claimant has since obtained a driver's license. The claimant is pursuing a small claims action to get Mr. Sams to relinquish the vehicle.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that the claimant was not able to work and available effective May 19, 2024. Benefits are denied effective May 19, 2024.

Iowa Code section 96.4(3)a provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. a. 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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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) states:

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.

Iowa Admin. Code r. 871-24.22(1) 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.

b. Interpretation of ability to work. The law provides that an individual must be able to work to be eligible for benefits. This means that the individual must be physically able to work, not necessarily in the individual's customary occupation, but able to work in some reasonably suitable, comparable, gainful, full-time endeavor, other than self-employment, which is generally available in the labor market in which the individual resides.

Iowa Admin. Code r. 871-24.23(4) and (18) states:

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

(4) If the means of transportation by an individual was lost from the individual's residence to the area of the individual's usual employment, the individual will be deemed not to have met the availability requirements of the law. However, an individual shall not be disqualified for restricting employability to the area of usual employment. See subrule 24.24(7).

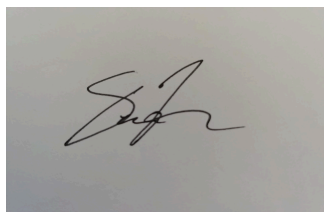
(18) Where the claimant's availability for work is unduly limited because such claimant is willing to work only in a specific area although suitable work is available in other areas where the claimant is expected to be available for work.

I agree with the representative. The claimant is not able and available May 19, 2024, due to lacking transportation. It is acknowledged that the claimant argues the car was taken from her by Mr. Sams. Iowa Admin. Code r. 871-24.23(4) does not allow for this fact to change the analysis.

It is further acknowledged that Iowa Admin. Code r. 871-24.23(4) states the claimant shall not be disqualified for restricting employability "to the area of usual employment." I find the alternative locations are within that same area because they are within a couple of miles from the claimant's home. The claimant did not have transportation to travel even to her usual place of employment to work with Mr. Sams. That is because the claimant did not have daycare. She needed to drive to take her children to daycare. Without daycare, the claimant had to watch those two minor children. So, she would have still needed transportation at least until the end of June 2024 to be available for work at any location. The claimant did not have a driver's license. Ultimately, the claimant did not communicate with Mr. Kampf to perhaps come up with a different arrangement. The claimant was not able and available for work effective May 19, 2024.

DECISION:

The June 14, 2024, (reference 02) unemployment insurance decision is AFFIRMED. The claimant was not able to work and available for work effective May 19, 2024. Benefits are denied effective May 19, 2024.



Sean M. Nelson
Administrative Law Judge II

July 29, 2024
Decision Dated and Mailed

smn/rvs

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.