

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

VERONICA SANCHEZ-HOUSE
Claimant

CASEY'S MARKETING COMPANY
Employer

APPEAL 24A-UI-07140-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 08/13/23
Claimant: Respondent (2)**

Iowa Code § 96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

Casey's Marketing Company, the employer/appellant,¹ appealed the Iowa Workforce Development (IWD) August 1, 2024, (reference 04) unemployment insurance (UI) decision. IWD found Ms. Sanchez-House eligible for REGULAR (state) UI benefits as of June 30, 2024 because IWD concluded she is able to and available for work as of this date. On August 13, 2024, the Iowa Department of Inspections, Appeals, and Licensing (DIAL), UI Appeals Bureau mailed a notice of hearing to the employer and Ms. Sanchez-House for a telephone hearing scheduled for August 26, 2024.

The administrative law judge held a telephone hearing on August 26, 2024. The employer participated in the hearing through Sally Lorenzen, human resources generalist, and Brandy Price, district manager. Ms. Sanchez-House did not participate in the hearing. The administrative law judge admitted Department's Exhibit 1 and Employer's Exhibit 1 as evidence.

The administrative law judge concludes Ms. Sanchez-House is not eligible for UI benefits as of June 30, 2024 because she is not able to and available for work as of this date.

ISSUE:

Is Ms. Sanchez-House able to and available for work as of June 30, 2024?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Ms. Sanchez-House began working for the employer in October 2023 at one of the employer's Spencer, Iowa stores. She worked as a full-time team member.

On, or about, June 30, 2024, the employer closed due to flooding in Spencer. The employer offered Ms. Sanchez-House hours at a different store in Spencer. Around the same time, Ms. Sanchez-House temporarily moved from her home due to flooding in Spencer. Ms. Sanchez-House told the employer that she was not able to work until August 1 because of her

¹ Appellant is the person or employer who appealed.

temporary move. Ms. Sanchez-House returned to town in August and worked five shifts. On August 20, Ms. Sanchez-House resigned to work for a different employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Ms. Sanchez-House is not able to and available for work as of June 30, 2024.

Iowa Code § 96.4(3) provides, in relevant part:

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 96.1A, subsection 37, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, paragraph "c".

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

(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.

A person claiming benefits has the burden of proof that she is be able to work, available for work, and earnestly and actively seeking work.² 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."³ "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."⁴ "[O]nly those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits."⁵

² Iowa Admin. Code r. 871-24.22.

³ *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).

⁴ *Sierra* at 723.

⁵ *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004)

In this case, Ms. Sanchez-House did not participate in the hearing. Ms. Sanchez-House has not established that she is able to and available for work, or temporarily or partially unemployed as of June 30, 2024, so she is not eligible for UI benefits as this date

DECISION:

The August 1, 2024 (reference 04) UI decision is REVERSED. Ms. Sanchez-House is not able to and available for work as of June 30, 2024. So, she is not eligible for REGULAR (state) UI benefits as of this date.



Daniel Zeno
Administrative Law Judge

August 27, 2024
Decision Dated and Mailed

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NOTE TO MS. SANCHEZ-HOUSE:

- Per this decision, you are not eligible for REGULAR (state) UI benefits as of June 30, 2024 under state law. But you may qualify for Disaster Unemployment Assistance (DUA) benefits due to flooding. DUA benefits are federal unemployment insurance (UI) benefits.
- **You must apply for DUA benefits to see if you are eligible.**
- You may apply for DUA benefits by online at <https://workforce.iowa.gov/unemployment/dua>
- You may also apply by calling IWD at 1-866-239-0843.
- You may also stop by the IWD Spencer office for help applying. The address and telephone number for the Spencer office are:

217 W 5th St
Spencer, IA 51301
Telephone: 712-262-1971
- To check on your DUA application contact IWD by phone, email, or online.
 - Phone: 1-866-239-0843
 - Email: uiclaimshelp@iwd.iowa.gov
 - Online: Go to <https://workforce.iowa.gov/>, click on "Contact" then click on "Unemployment Help" and complete the "Unemployment Help Request" form.

APPEAL RIGHTS. If you disagree with this 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:

**Iowa 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:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
En línea: 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 adquiera 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.