

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STEVEN D COOKE
Claimant

APPEAL 20A-EUCU-00015-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 03/29/20
Claimant: Appellant (3)**

Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search
Iowa Admin. Code r. 871-24.22(3) – Earnest and Active Work Search

STATEMENT OF THE CASE:

Claimant filed an appeal from the November 3, 2020 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on December 21, 2020, at 11:00 a.m. Claimant participated. Claimant's Exhibit A was admitted. Official notice was taken of the administrative record.

ISSUES:

Whether claimant is able to and available for work.
Whether claimant failed to make an active work search.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant is employed as a full-time Fry Cook with Pizza Ranch. Claimant last performed work on March 16, 2020. Employer closed its restaurant from March 17, 2020 through the end of May 2020; employer had no work available for claimant during that time. Employer notified claimant that it would be reopening at the end of May 2020. On June 10, 2020, a medical professional advised claimant not to return to work because claimant's chronic medical conditions placed him at higher risk of contracting Covid-19. (See Exhibit A) Claimant informed employer that he would not be returning to work based upon this advice. Employer and claimant agreed claimant would return to work when the pandemic was resolved or a vaccine was available. Claimant has not been released by his physician to return to work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is not able to and available for work effective June 10, 2020. Benefits are denied.

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), (2) provide, in pertinent 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.

Iowa Admin. Code r. 871-24.23(1), (6), (35) provide:

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.

(6) If an individual has a medical report on file submitted by a physician, stating such individual is not presently able to work.

(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 he is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

Claimant has chronic medical conditions that make him more susceptible to Covid-19. Due to these underlying conditions, claimant was advised by a medical professional not to return to work. Claimant remains under the care of that medical professional and has not yet been released to return to work. Claimant is not able to or available for work effective June 10, 2020. Accordingly, he is not eligible for unemployment insurance benefits effective June 7, 2020. Because claimant is disqualified from receiving benefits due to not being able to and available for work, the issue of whether claimant failed to make an active work search is moot.

DECISION:

The November 3, 2020 (reference 01) unemployment insurance decision is modified in favor of respondent. Claimant is not able to or available for work effective June 10, 2020. Accordingly, benefits are denied effective June 7, 2020. The issue of whether claimant failed to make an active work search is moot.



Adrienne C. Williamson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
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Des Moines, Iowa 50319-0209
Fax (515)478-3528

January 14, 2021
Decision Dated and Mailed

acw/mh

NOTE TO CLAIMANT:

- This decision determines you are not eligible for REGULAR unemployment insurance benefits under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **If you have applied and have been approved for PUA benefits, this decision will NOT negatively affect your entitlement to PUA benefits. If you would like the effective date of your PUA approval changed based upon this decision, you may file an appeal of the PUA decision by following the instructions on that decision.**