

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**LEVI B ABBAS**  
Claimant

**HY-VEE INC**  
Employer

**APPEAL 21A-UI-00380-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/13/20**  
**Claimant: Appellant (1R)**

Iowa Code § 96.4-3 – Able and Available  
871 IAC 24.23(10) – Voluntary Leave of Absence

**STATEMENT OF THE CASE:**

Levi Abbas (claimant) appealed a representative's December 2, 2020, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits as of Sept 13, 2020, because a leave of absence was granted by Hy-Vee (employer) at the claimant's request. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 5, 2021. The claimant participated personally. The employer was represented by Barbara Buss, Hearing Representative, and participated by Natalie McGee, Assistant Vice President of Human Resources. The administrative law judge took official notice of the administrative file.

**ISSUE:**

The issue is whether the claimant is available for work and whether the claimant was on an approved leave of absence.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on January 6, 2016, as a part-time employee. He is now working as a full-time warehouse worker.

The claimant was exposed to a co-worker who tested positive for Covid-19. To prevent the spread of the virus, the employer quarantined the claimant from September 15, 2020, through September 21, 2020.

The claimant filed for unemployment insurance benefits with an effective date of September 13, 2020. His weekly benefit amount was determined to be \$493.00. The claimant received benefits of \$371.00 for the week ending September 19, 2020. The claimant reported wages of \$245.00 for the week ending September 19, 2020. The employer paid the claimant wages of \$266.00 for the week ending September 19, 2020.

## REASONING AND CONCLUSIONS OF LAW:

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 96.1A, 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(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. 871-24.23(1) and (10) 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.

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). When employees are unable to perform work due to a medical condition, they are considered to be unavailable for work. The claimant had been in contact with an employee who was diagnosed with Covid-19. To prevent the spread of a deadly virus, the employer removed and quarantined an employee from the workplace. He was not able and available for work during that period. The claimant is disqualified from receiving unemployment insurance benefits for the benefit week ending September 19, 2020.

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, he may be eligible for federally funded unemployment insurance benefits under the

Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600.00 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed. The claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

The issue of whether claimant has been overpaid unemployment insurance benefits is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

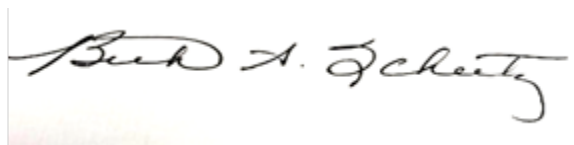
**DECISION:**

The representative's December 2, 2020, decision (reference 01) is affirmed. The claimant is considered to be unavailable for work and is not eligible to receive unemployment insurance benefits from Sept 13, 2020

**REMAND:**

The issue of whether claimant has been overpaid unemployment insurance benefits is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

*Note to Claimant:* This decision determines you are not eligible for regular unemployment insurance benefits. 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. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.



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Beth A. Scheetz  
Administrative Law Judge

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February 18, 2021  
Decision Dated and Mailed

bas/kmj