

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**KAREN MARUSKA
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IDA GROVE IA 51445 1522**

**FAMILY TABLE OF IDA GROVE LTD
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IDA GROVE IA 51445**

APPEAL 21A-UI-25301-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

APPEAL RIGHTS:

This Decision Shall Become Final, unless within fifteen (15) days from the mailing date below the administrative law judge's signature on the last page of the decision, you or any interested party:

Appeal to the Employment Appeal Board by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
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.

YOU MAY REPRESENT yourself in this appeal or you may 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. It is important that you file your 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.

ONLINE RESOURCES:

UI law and administrative rules:

<https://www.iowaworkforcedevelopment.gov/unemployment-insurance-law-and-administrative-rules>

UI Benefits Handbook:

<https://www.iowaworkforcedevelopment.gov/unemployment-insurance-claimant-handbook>

Employer UI Handbook: <https://www.iowaworkforcedevelopment.gov/employer-handbook>

Report UI fraud: <https://www.iowaworkforcedevelopment.gov/report-fraud>

Employer account access and information: <https://www.myiowaui.org/UITIPTaxWeb/>

National Career Readiness Certificate and Skilled Iowa Initiative: <http://skillediowa.org/>

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KAREN MARUSKA
Claimant

FAMILY TABLE OF IDA GROVE LTD
Employer

APPEAL 21A-UI-25301-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
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:

On November 15, 2021, Karen Maruska (claimant) filed a timely appeal from the November 10, 2021, reference 02, unemployment insurance decision that denied benefits effective April 26, 2020, because she was not able to and available for work with Family Table of Ida Grove, LTD (employer). After due notice was issued, a telephone conference hearing was held on January 12, 2022, and consolidated with the hearing for appeal 21A-UI-25298-SC-T. The claimant participated personally. The employer participated through Eric Zimmerman, Owner/Manager. No exhibits were offered into the record.

ISSUE:

Is the claimant able to work, available for work, and actively and earnestly seeking work effective April 26, 2020?

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: The claimant began working for the employer on June 11, 2007, as a part-time server. Due to the global pandemic, the employer shut down operations on or about March 15, 2020. Eric Zimmerman, Owner/Manager, contacted the claimant the week of April 26 to let her know the restaurant would be reopening and she could return to the same position, with the same pay and hours. The claimant declined to return due to the continued health threat of the pandemic. The claimant still has not returned to work with the employer and is not seeking employment elsewhere.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not able to or available for work. Benefits are denied effective April 26, 2020, until the claimant makes herself available for work again.

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 provides, in relevant 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.

...

(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, in relevant part:

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

...

(3) If an individual places restrictions on employability as to the wages and type of work that is acceptable and when considering the length of unemployment, such individual has no reasonable expectancy of securing work, such individual will be deemed not to have met the availability requirements of Iowa Code section 96.4(3).

...

(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.

...

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

...

(20) Where availability for work is unduly limited because the claimant is waiting to be recalled to work by a former employer or waiting to go to work for a specific employer and will not consider suitable work with other employers.

...

(41) The claimant became temporarily unemployed, but was not available for work with the employer that temporarily laid the claimant off. The evidence must establish that the claimant had a choice to work, and that the willingness to work would have led to actual employment in suitable work during the weeks the employer temporarily suspended operations.

An individual claiming benefits has the burden to prove that she is able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. The claimant is on a leave of absence related to the pandemic and is not making herself available for work during her normal hours. She has not established that she is genuinely attached to the labor market. Accordingly, she is not eligible for unemployment insurance benefits effective April 26, 2020. Benefits are withheld until such time as the claimant makes herself available for work.

DECISION:

The November 10, 2021, reference 02, decision is affirmed. The claimant is not able to and available for work. Benefits are withheld effective April 26, 2020, until such time as the claimant makes herself available for work.



Stephanie R. Callahan
Administrative Law Judge

February 7, 2022
Decision Dated and Mailed

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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 were unemployed between February 2, 2020, and June 12, 2021, 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.** To apply for PUA go to <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-appeals> in the last paragraph under "WHAT TO EXPECT FROM THE HEARING. **The reference number is 125298, the pin number you used for the hearing.**

If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.