

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOCELYN K HICKEY
Claimant

**APPEAL 20A-UI-02228-ED-T
ADMINISTRATIVE LAW JUDGE
DECISION**

PANDA EXPRESS INC
Employer

**OC: 04/26/20
Claimant: Appellant (1R)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(10) – Able & Available – Availability Disqualifications – Leave of Absence

STATEMENT OF THE CASE:

On December 23, 2020, the employer filed an appeal from the December 15, 2020, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on March 2, 2021. Claimant participated personally. The employer did not participate. Claimant's Exhibits A and B were received into the record.

ISSUES:

Is the claimant able to and available for work?
Was the claimant on an approved leave of absence?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer in January of 2018. Claimant last worked as a full-time as an assistant manager. Claimant's immediate supervisor was Adrianna Arellano.

Claimant suffers from an underlying medical condition that puts her at increased risk if she were exposed to Covid-19. The employer is a restaurant. On March 17, 2020, claimant asked to be taken off the schedule for a period of time so she could protect herself from Covid-19 exposure. Claimant's employer approved the request. Claimant provided medical documentation to her employer regarding her underlying medical condition. In July 2020, the employer contacted claimant to request claimant return to work. At that time, claimant did not think it was safe for her to return to work, she submitted her resignation.

There has been no initial investigation and determination regarding claimant's separation from this employer. The question regarding the reason for separation from this employer will be remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work effective March 17, 2020.

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. 871-24.23(10) provides:

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

(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.

Here, claimant was on a leave of absence due to her concern of being exposed to Covid-19 and her underlying health condition. Claimant has not established she is able to and available for work, even under the United States Department of Labor's guidance to flexibly interpret this requirement. See Unemployment Insurance Program Letter No. 10-20. Therefore, claimant is not eligible for regular, state-funded unemployment insurance benefits from the effective date of the claim.

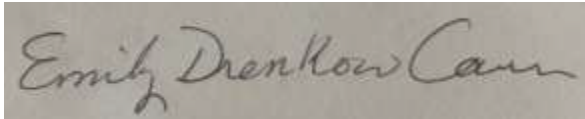
Even though claimant is not eligible for regular unemployment insurance benefits under state law, the claimant may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136. Section 2102 of the CARES 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 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.

DECISION:

The December 15, 2020, (reference 01) unemployment insurance decision is affirmed. The claimant is not available for work effective April 26, 2020, and regular, state-funded unemployment insurance benefits are denied. Claimant may be eligible for Pandemic Unemployment Assistance.

REMAND:

The issue of the reason for the separation from employment is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.



Emily Drenkow Carr
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

March 8, 2021
Decision Dated and Mailed

ed/lj

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). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA, you may be required to repay the benefits you've received so far.**