

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KENNETH J LAMB
Claimant

JELD-WEN INC
Employer

APPEAL 21A-UI-02954-S1-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/10/20
Claimant: Appellant (1/R)

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

STATEMENT OF THE CASE:

Kenneth Lamb (claimant) appealed a representative's January 7, 2021, decision (reference 04) that concluded ineligibility to receive unemployment insurance benefits as of September 27, 2020, because a leave of absence was granted by Jeld-Wen (employer) at the claimant's request. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 12, 2021. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing. The administrative law judge took official notice of the administrative file. 20A-UI-02954.S1 and 20A-UI-02955.S1 were heard at the same time.

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 started working for the employer on September 1, 2012. He is currently a full-time machine operator. The claimant and/or his family member tested positive for Covid-19 and he quarantined from approximately May 10, 2020, to June 13, 2020, and July 12, 2020, to August 22, 2020.

The claimant filed for unemployment insurance benefits with an effective date of May 10, 2020. His weekly benefit amount was determined to be \$518.00. The claimant received benefits from May 10, 2020, to June 13, 2020, and July 12, 2020, to August 22, 2020. This is a total of \$4,759.00 in state unemployment insurance benefits after May 10, 2020. He also received Federal Pandemic Unemployment Compensation and Lost Wage Assistance. The claimant filed an additional claim for benefits on September 27, 2020, but continued to work.

In November 2020, the claimant had Covid-19 symptoms and later tested positive. He notified the employer and quarantined, with a doctor's instruction for most of the three weeks ending

November 21, 2020. The claimant filed for unemployment insurance benefits because he received them previously.

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. 871-24.23(23) provides:

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

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

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). The claimant filed an additional claim for unemployment insurance benefits as of September 27, 2020. The claimant's testimony indicated he was still working each week for the employer. He reported wages each week from September 27, 2020, through October 31, 2020. The claimant is disqualified from receiving unemployment insurance benefits because the claimant was not available for other work as of September 27, 2020.

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.

(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.

When employees are unable to perform work due to a medical condition, they are considered to be unavailable for work. When employees request and are granted a leave of absence, they are considered to be voluntarily unemployed. When employees are unable to perform work due to a medical condition, they are considered to be unavailable for work. The claimant had been diagnosed with Covid-19. To prevent the spread of a deadly virus, the physician and the employer removed and quarantined the claimant from the workplace. The claimant was not able and available for work during the period of the quarantine. The claimant is disqualified from receiving unemployment insurance benefits the three weeks ending November 21, 2020. After November 21, 2020, he returned to full-time work.

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 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.

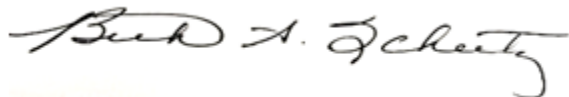
The issue of whether claimant was able and available for work as of May 10, 2020, is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

DECISION:

The representative's January 7, 2021, decision (reference 04) is affirmed. The claimant is considered to be unavailable for work and is not eligible to receive unemployment insurance benefits as of September 27, 2020.

The issue of whether claimant was able and available for work as of May 10, 2020, 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>.



Beth A. Scheetz
Administrative Law Judge

March 16, 2021
Decision Dated and Mailed

bas/mh