

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DARRELL MCGILL
Claimant

APPEAL 20A-UI-12525-ED-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

RESTAURANT CONCEPTS INC
Employer

OC: 05/31/20
Claimant: Appellant (1R)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(1) – Able & Available – Leave of Absence

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 5, 2020, (reference 02) unemployment insurance decision that denied benefits based upon claimant being on a leave of absence effective May 31, 2020. After due notice was issued, a telephone conference hearing was scheduled to be held on December 2, 2020. Claimant, Darrell McGill, participated. The employer did not participate. No exhibits were offered.

ISSUE:

Was the claimant able to work, available for work, and actively and earnestly seeking work as of May 31, 2020?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full time preparing food. Claimant's direct supervisor's name was Jake. Claimant requested time away from work in March 2020 due to a physical illness. Claimant's employer agreed to the request. Claimant's doctor released him back to work after two weeks. Claimant did not return to work at that time because he had been exposed to Covid-19 and was directed by his physician to quarantine at home. Claimant did not have a telework option for his job. When the quarantine period was over, claimant attempted to return to work, but his employer did not respond to his phone calls.

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 May 31, 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:

Commented [MN1]: If you have the exact dates he was off work and tried to return, put those in there. The OC date is 5/31/20, so you don't care about whether he was A&A prior to that date, you only care about that date forward.

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)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. 871-24.22(2) provides:

Benefit 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:

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.

(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.

The weight of the evidence establishes that Claimant requested time away from work. That request was granted by the employer. Accordingly, claimant was voluntarily unemployed and not eligible for unemployment insurance benefits. Claimant did not meet the availability requirement.

Mr. McGill elected to go off work and remain off work. The employer acquiesced in that decision until April 15, 2020 the claimant began requesting a return to work, however, the employer did not respond. Mr. McGill did not meet the availability requirement during the period when he was still employed and off work of his own volition. Mr. McGill became available after a month when he attempted to resume work but his communication attempts with his employer went unanswered.

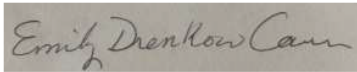
Commented [MN2]: I'm going to send you my shell on A&A for medical reasons as well. There's some language in there I think you'll want to add (and it covers a TON of different scenarios)

DECISION:

The October 5, 2020, (reference 01) unemployment insurance decision is affirmed. The claimant was on an approved leave of absence, effective May 31, 2020. Benefits are denied.

REMAND:

This matter is remanded to the Benefits Bureau for a fact-finding interview and entry of decision related to the employment separation. This matter is remanded to the Benefits Bureau for entry of overpayment decisions based on the regular benefits and FPUC benefits the claimant received through May 31, 2020.



Emily Drenkow Carr
Administrative Law Judge

December 10, 2020
Decision Dated and Mailed

ed/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). 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 have received