

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JACK D WILKES
Claimant

LOWES HOME CENTERS LLC
Employer

APPEAL 20A-UI-15986-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/12/20
Claimant: Appellant (2)

Iowa Code § 96.4(3) – Able and Available
Iowa Admin. Code r. 871-24.23(10) – Able & Available – Availability Disqualifications

STATEMENT OF THE CASE:

On November 13, 2020, the claimant filed an appeal from the November 5, 2020, (reference 02) unemployment insurance decision that denied benefits effective April 26, 2020. The parties were properly notified about the hearing. A telephone hearing was held on February 1, 2021. Claimant participated. Employer participated through store director Todd Harris and assistant manager Dennis Smith.

ISSUES:

Is the claimant able to and available for work?
Is the claimant on a voluntary 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 November 2007 as a part-time employee in the plumbing department. Claimant requested two weeks off from April 12, 2020, through April 26, 2020. Claimant has been denied unemployment insurance benefits during that time period and has not appealed that decision.

Claimant was available throughout his base period for a 10-hour block on Saturday and for shorter periods of time on Wednesday and Thursday. Shortly before March 2020, employer began using a computer program to generate a work schedule for its employees. The program automatically scheduled employees based on their availability and business demands, without the intervention or assistance of a human. Even though employer was aware claimant was available after April 26, 2020, the computer program did not schedule him to work because his availability did not match business demands.

Claimant repeatedly talked to employer about being put back on the schedule. The issue was not resolved until May 30, 2020, when he was put back on the schedule.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work effective April 26, 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 no longer on a leave of absence. Claimant informed employer he was available to work and he was available the same hours that he had been available throughout his base period. Employer did not schedule claimant for work because business needs did not call for it. Claimant is eligible for regular unemployment insurance benefits effective April 26, 2020.

DECISION:

The November 5, 2020, (reference 02) unemployment insurance decision is reversed. Claimant is able to and available for work effective April 26, 2020. Benefits are allowed, provided claimant is otherwise eligible.



Christine A. Louis
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

February 16, 2021

Decision Dated and Mailed

cal/kmj