

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARY E CRISWELL
Claimant

AMERICAN WAGERING INCORPORATED
Employer

APPEAL 22A-UI-03049-AR-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/05/20
Claimant: Appellant (1R)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871—24.23(10) – Voluntary Leave of Absence

STATEMENT OF THE CASE:

The claimant, Mary E. Criswell, filed an appeal from the January 6, 2022, (reference 01) unemployment insurance decision that denied benefits based upon the determination that claimant was on an approved leave of absence effective December 27, 2020. The parties were properly notified of the hearing. A telephone hearing was held on March 1, 2022. The claimant participated personally. The employer, American Wagering Incorporated, did not participate. Claimant’s Exhibits A and B were admitted. The administrative law judge took official notice of the administrative record.

ISSUES:

Is the claimant able to and available for work effective December 27, 2020?
Is the claimant on an approved leave of absence effective December 27, 2020?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant became employed with this employer as a ticket writer in August 2018. She remains employed in that role as of the date of her hearing.

On November 18, 2020, claimant contracted COVID-19. She became very ill, and her recovery took an extended period of time. She was off work, first due to COVID-19, then due to recovery from COVID-19, from November 18, 2020, until May 16, 2021, when she returned to work as before her leave. Claimant was restricted from working during this entire period by her doctor, who expressed concern that claimant might be susceptible to other illnesses due to her continued recovery from COVID-19.

Claimant reopened her claim for benefits effective December 27, 2020. Thereafter, she filed weekly continuing claims through the end of her claim year, which occurred April 3, 2021.

Claimant did apply for Pandemic Unemployment Assistance (PUA) in spring 2021. She was approved for PUA benefits effective April 4, 2021. The administrative record indicates she filed for and received PUA benefits until she returned to work after her leave.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was not able to and available for work. Benefits are withheld.

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 restricted from working due her diagnosis of and recovery from COVID-19. She was not able to and available for work effective December 27, 2020, because she was on an approved leave of absence. Benefits are withheld.

DECISION:

The January 6, 2022, (reference 01) unemployment insurance decision is affirmed. The claimant is not able to work and available for work effective December 27, 2020. Benefits are denied.

REMAND:

The matter is remanded to the Benefits Bureau of Iowa Workforce Development to review whether the period of PUA eligibility should be effective at an earlier date due to claimant now being found ineligible for regular unemployment insurance benefits effective December 27, 2020. Furthermore, the issue of overpayment is remanded to the Benefits Bureau for an initial investigation and determination.



Alexis D. Rowe
Administrative Law Judge

March 21, 2022
Decision Dated and Mailed

ar/mh