

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**DANA C RIECKEN**  
Claimant

**ISUNET LLC**  
Employer

**APPEAL NO. 20A-UI-09677-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/22/20**  
**Claimant: Appellant (1/R)**

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

**STATEMENT OF THE CASE:**

Dana Riecken filed a timely appeal from the August 6, 2020, reference 01, decision that denied benefits effective May 3, 2020, based on the deputy's conclusion that Mr. Riecken requested and was granted a leave of absence, was voluntarily unemployed, and was unavailable for work. After due notice was issued, a hearing was held on September 28, 2020. Mr. Riecken participated. Omar Akili represented the employer and presented additional testimony through Timothy Payton. Exhibit A was received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX and WAGE-A.

**ISSUES:**

Whether the claimant has been able to work and available for work since March 22, 2020.  
Whether the claimant has been on a leave of absence since March 22, 2020.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Timothy Payton and Omar Akili own and operate ISUnet, L.L.C. in downtown Ames. Dana Riecken worked for the employer during two distinct periods. The most recent period of employment began in 2017. Mr. Riecken last performed work for the employer on March 18, 2020. Mr. Riecken performed technical support and computer repair duties about 30 hours a week for \$15.00 per hour. Mr. Riecken worked the noon-to close shift, Monday through Friday. As of October 2019, the employer's business closed at 5:00 p.m. daily. Mr. Payton and Mr. Akili performed much of their work remotely. However, they needed an employee at the business location during hours of operation to receive and interact with customers as those customers brought in computers to be repaired, dropped off modems or picked up modems.

When COVID-19 began to impact operations in March 2020, Mr. Akili and Mr. Payton announced that they would be spending even less time in the workplace during the pandemic. On March 18, 2020, Mr. Riecken told Mr. Akili that he thought it was time for him to "lay low" due to the COVID-19 pandemic. Mr. Riecken mentioned that he might go visit an uncle in

Minnesota. Mr. Riecken mentioned personal health issues and his father's health issues as the basis for his decision to go off work. Mr. Riecken referenced obesity, being a cigarette smoker, hypertension as factors that increased his risk in connection with COVID-19. Mr. Riecken also mentioned his father's serious health issues as factors in his decision to go off work. The employer continued to have the same work available for Mr. Riecken at that point. The employer was not open to having Mr. Riecken perform his work remotely. Some of the work involved in-person communication and contact with customers and could not be performed remotely. The employer had not taken any steps up to that time to implement precautions to hinder the spread of COVID-19 in the workplace. Mr. Riecken in essence announced that he was commencing a leave of absence and the employer temporarily acquiesced. With no one present and available to man the business location, the employer by and large closed its doors to the public, continued operations remotely and met customers at the workplace by appointment as necessary.

On May 2, 2020. Mr. Riecken and Mr. Akili spoke by phone. Mr. Akili told Mr. Riecken that he wanted to reopen the office on Douglas Avenue with Mr. Riecken being the only person manning the office. Mr. Akili was open to input from Mr. Riecken regarding how to safely reopen the office to the public. Mr. Riecken expressed an interest in working from home, but advised that he was not interested in returning to perform work in the workplace at that time. The two men agreed to further the discussion at a later date. However, on May 15, 2020, Mr. Akili concluded the employment was done when Mr. Riecken did not respond to multiple messages Mr. Akili sent to Mr. Riecken through the employer's text messaging software, the same messaging system Mr. Akili had used to prompt the May 2 telephone call.

Mr. Riecken has elected to remain off work and sequestered at his home from the time he went off work in March 2020 up to the present. Mr. Riecken has elected thus far not to seek other employment.

Mr. Riecken established an original claim for benefits that was effective March 22, 2020. This employer is the sole base period employer. Iowa Workforce Development set Mr. Riecken's weekly benefit amount at \$264.00. Mr. Riecken has made weekly claims for the period beginning March 22, 2020 through the benefit week that ended September 19, 2020. Mr. Riecken received \$264.00 in regular benefits for each of the weeks between March 22, 2020 and August 1, 2020. In addition, Mr. Riecken received \$600.00 in Federal Pandemic Unemployment Compensation for each of the weeks between March 29, 2020 and July 25, 2020. Mr. Riecken received \$300.00 in Lost Wages Assistance (LWA) for the week that ended August 1, 2020.

## **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 96.19, 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(2) 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.

(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.

Iowa Admin. Code r. 871-24.23(10) and (26) 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.

...

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa Ct. App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

Mr. Riecken's testimony at various junctures in the hearing was not credible. At the hearing, Mr. Riecken completely abandoned the argument set forth in his online appeal, that he went off

work due to his and his father's health issues, and asserted instead that the employer had initiated his time away from work. Only after the administrative law judge referenced the appeal letter and the absence of testimony regarding purported health concerns did Mr. Riecken take up that topic. At another point, Mr. Riecken asserted ignorance of the employer's attempts to contact him in May via the messaging system the employer had routinely used to communicate with him throughout the employment. Shortly thereafter, in response to testimony from the employer, Mr. Riecken readily admitted that it was a message he received through that same messaging system that prompted him to call the employer. Where Mr. Riecken's testimony diverges from the employer's testimony regarding the same facts, the administrative law judge concluded the employer's testimony was credible and Mr. Riecken's testimony was not credible.

The weight of the evidence establishes that Mr. Riecken has not been available for work within the meaning of the law since he filed the original claim that was effective March 22, 2020. Mr. Riecken initiated a leave of absence effective March 18, 2020 and continued on an approved leave of absence until May 15, 2020, at which point Mr. Riecken elected not to further participate in the employer-initiated discussion about returning to work. The evidence indicates that Mr. Riecken has elected not to make himself available for any employment up to the present. Mr. Riecken is not 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, Mr. Riecken is not eligible for regular, state-funded unemployment insurance benefits from the effective date of the claim. The availability disqualification continued as of the September 28, 2020 appeal hearing date.

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 August 6, 2020, reference 01, decision is affirmed. The claimant has not been available for work since he established the original claim for benefits that was effective March 22, 2020. Accordingly, effective March 22, 2020, the claimant is not eligible for regular, state-funded unemployment insurance benefits. The availability disqualification continued at the time of the September 28, 2020 appeal hearing.

This matter is remanded to the Benefits Bureau for initial investigation of and entry of a decision regarding the separation the employer asserts occurred on or about May 15, 2020.

This matter is remanded to the Benefits Bureau for entry of overpayment decisions regarding the regular benefits, the FPUC benefits, and the LWA benefits the claimant received.



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James E. Timberland  
Administrative Law Judge

September 30, 2020  
Decision Dated and Mailed

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jet/sam

**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.**