

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TIMOTHY W KREIN
Claimant

HY-VEE INC
Employer

APPEAL 20A-UI-05420-JC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant/appellant, Timothy W. Krein, filed an appeal from the May 26, 2020 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 8, 2020. The claimant participated personally. The employer, Hy-Vee Inc., was represented by Erin Bewley, a hearing representative for Corporate Cost Control. Devon Hartman, Store Director, testified.

The administrative law judge took official notice of the administrative records. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the claimant on an approved leave of absence?
Is the claimant able to work and available for work effective March 29, 2020?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began work on August 25, 2017 and works for this employer on a part-time basis as a delivery driver.

The claimant requested, and was approved for a personal leave of absence effective March 30, 2020. The claimant requested a leave of absence because he has health issues which make him high risk if exposed to COVID-19. The claimant’s job duties cannot be done remotely or contactless. The claimant hopes to return to work in early fall. The employer has full-time work available to the claimant.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not able to and available for work effective March 29, 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 96.1A, subsection 38, paragraph "b", subparagraph (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.

For an individual to be eligible to receive benefits, he must be able to work, available for work, and actively seeking work as required by the unemployment insurance law. Iowa Code § 96.4(3). The burden is on the claimant to establish that he is able and available for work within the meaning of the statute. Iowa Code § 96.6(2); Iowa Admin. Code r. 871-24.22.

The administrative law judge recognizes the claimant has filed his current claim due to hardship related to the COVID-19 pandemic. Here, employer has work available for claimant. However, claimant informed employer he is unable to work due to having medical issues that make him high risk if exposed to COVID-19. Employer agreed to allow claimant time off for that reason. Claimant is considered to be on a leave of absence due to his personal health and is not available for work. Therefore, claimant is not eligible for regular, state-funded unemployment insurance benefits.

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, he/she 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.

PL116-136, Sec. 2104 provides, in pertinent part:

(b) Provisions of Agreement

(1) Federal pandemic unemployment compensation.--Any agreement under this section shall provide that the State agency of the State will make payments of regular compensation to individuals in amounts and to the extent that they would be determined if the State law of the State were applied, with respect to any week for which the individual is (disregarding this section) otherwise entitled under the State law to receive regular compensation, as if such State law had been modified in a manner such that the amount of regular compensation (including dependents' allowances) payable for any week shall be equal to

(A) the amount determined under the State law (before the application of this paragraph), plus

(B) an additional amount of \$600 (in this section referred to as "Federal Pandemic Unemployment Compensation").

....

(f) Fraud and Overpayments

(2) Repayment.--In the case of individuals who have received amounts of Federal Pandemic Unemployment Compensation to which they were not entitled, the State shall require such individuals to repay the amounts of such Federal Pandemic Unemployment Compensation to the State agency...

Here, the claimant is disqualified from receiving regular unemployment insurance (UI) benefits. Accordingly, this also disqualifies the claimant from receiving Federal Pandemic Unemployment Compensation (FPUC).

DECISION:

The unemployment insurance decision dated May 26, 2020, (reference 01) is affirmed. The claimant is not able and available for work effective March 29, 2020. Regular unemployment insurance benefits funded by the state of Iowa are denied until such time that the claimant is able to and available for work.



Jennifer L. Beckman
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

July 21, 2020
Decision Dated and Mailed

jlb/sam

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.

If you do not qualify for regular unemployment insurance benefits due to disqualifying separations 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.** More information about how to apply for PUA is available online at:

www.iowaworkforcedevelopment.gov/pua-information

If you have applied and have been approved for PUA benefits, this decision will not negatively affect your entitlement to PUA benefits.