

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**CONNIE V MERRILL**  
Claimant

**DIAL SILVERCREST CORP**  
Employer

**APPEAL NO. 20A-UI-09488-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

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

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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:**

Claimant Connie Merrill filed a timely appeal from the July 31, 2020, reference 01, decision that denied benefits effective July 31, 2020, based on the deputy's conclusion that the claimant 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 24, 2020. Claimant participated. The employer did not provide a telephone number for the hearing and did not participate. Exhibits A and B were received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX and WAGE-A.

**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: The claimant is employed as a part-time resident assistant with Dial Silvercrest Corporation. The claimant is assigned to the overnight shift at a long-term care facilities. The claimant conducts safety rounds, helps residents to the restroom and otherwise as needed, does laundry, and cleans. The claimant's work hours are 9:45 p.m. to 6:15 a.m., three nights per week. The claimant's wage is \$13.50 per hour. The claimant last performed work for the employer on March 22, 2020. Since that time, the claimant has been on an approved leave of absence. The claimant is 75 years old. The claimant's primary care provider determined that the claimant was at increased risk in connection with COVID-19 and advised the claimant to go off work. The claimant provided initial medical documentation to the employer in support of her request to go off work and has periodically provided updated medical documentation to the employer's scheduling personnel. The claimant most recently provided such documentation on or about July 31, 2020. In the most recent medical documentation, the claimant's doctor indicates that the claimant needs to remain off work "until the Covid pandemic stabilizes." The employer has continued to have the same work available to the claimant.

The claimant established an original claim for benefits that was effective March 22, 2020 and has made weekly claim for the period of March 22, 2020 through the week that ended September 19, 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:, in relevant part, as follows:

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.

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.

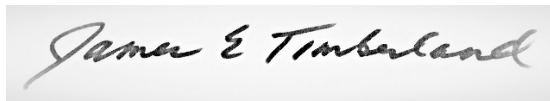
Here, claimant is on a leave of absence due to being high risk for COVID 19. Claimant has not established she is able to and available for work, even under the United States Department of Labor's guidance to flexibly interpret this requirement. See Unemployment Insurance Program Letter No. 10-20. Therefore, claimant is not eligible for regular, state-funded unemployment insurance benefits from the effective date of the claim.

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 July 31, 2020, reference 01, decision is affirmed. The claimant has not been available for work within the meaning of the law since she established her claim for benefits. Accordingly, the claimant is not eligible for regular, state-funded unemployment insurance benefits. Benefits are denied for the period beginning March 22, 2020. This availability disqualification continues at the time of the September 24, 2020 appeal hearing.



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James E. Timberland  
Administrative Law Judge

September 28, 2020  
Decision Dated and Mailed

jet/scn

**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.**