

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JAMES M SKELLEY**  
Claimant

**APPEAL 21A-UI-14883-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JOHN DEERE CONSTRUCTION  
EQUIPMENT**  
Employer

**OC: 03/28/21  
Claimant: Appellant (2R)**

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Iowa Code § 96.4(3) – Able to and Available for Work

**STATEMENT OF THE CASE:**

The claimant/appellant, James M. Skelley, filed an appeal from the June 22, 2021 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits and stated she was ineligible for benefits due to a requested leave of absence. . The parties were properly notified about the hearing. A telephone hearing was held on August 24, 2021. The claimant participated personally. The employer did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing.

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.

**ISSUE:**

Was the claimant able to work and available for work effective March 28, 2021?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began work with this employer on in January 2021 as a full-time forklift driver. He separated from employment on March 28, 2021. The issue of claimant’s permanent separation has not yet been addressed by Iowa Workforce Development.

Claimant was diagnosed with COVID-19 in January 2021. Claimant’s personal doctor released claimant to return to work without restriction. Claimant took approximately 9 COVID tests which showed he was “negative”. However, claimant had a lingering cough at the time of separation, due to scarring in his lungs from COVID-19, and the employer’s doctor would not allow claimant to return to work.

Claimant has sought new full-time employment since separation. He has been able and available for work and has not refused any offers of work.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant is able to and available for work effective March 28, 2021.

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".

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. Claimant credibly testified he did have COVID-19 in January 2021 but had been released to return to work without restrictions by his own doctor effective March 28, 2021. He has otherwise been able and available for work. Therefore, the administrative law judge concludes he is eligible for benefits, provided he meets all other requirements. The issue of claimant's permanent separation with this employer is remanded to the Benefits Bureau for an initial investigation and decision.

**DECISION:**

The unemployment insurance decision dated June 22, 2021, (reference 01) is REVERSED. The claimant is able and available for work effective March 28, 2021. Regular unemployment insurance benefits are allowed, provided he is otherwise eligible.

**REMAND:** The issue of claimant's permanent separation with this employer is remanded to the Benefits Bureau for an initial investigation and decision.



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Jennifer L. Beckman  
Administrative Law Judge

August 26, 2021  
Decision Dated and Mailed

jlb/ol