

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ROXANNE L DAVIS
Claimant

APPEAL NO. 20A-UI-11423-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

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

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:

Roxanne Davis filed a timely appeal from the September 9, 2020, reference 01, decision that denied regular benefits effective April 5, 2020, based on the deputy's conclusion that Ms. Davis 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 November 9, 2020. Roxanne Davis participated personally and was represented by Cari Davis. Tabby Moore represented the employer. 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:

Whether the claimant is able to and available for work?
Whether the claimant is on a voluntary leave of absence?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Roxanne Davis has been employed by Casey's since 1993. Until the end of March 2020, Ms. Davis worked at the Winterset Casey's Store as a full-time cashier. Her usual work hours were 8:00 a.m. to 3:00 p.m., Monday through Friday. Ms. Davis is 64 years old and suffers from hypertension. In March 2020, Ms. Davis became concerned about the risk that potential exposure to COVID-19 presented to her health. At the time, the employer did not require staff to wear masks to hinder the spread of COVID-19. Ms. Davis spoke with Store Manager Tabby Moore about her concern and requested to go off work for two weeks. Ms. Moore valued Ms. Davis' long-term service to the employer, was aware of Ms. Davis' underlying health issues, and approved Ms. Davis' request for time off. Both parties were functioning under the belief that the threat posed by COVID-19 would dissipate. When that did not happen, Ms. Davis requested to continue her time away from work and the employer approved the request. Since that time, Ms. Davis has continued on an approved informal leave of absence and has continued to quarantine at home. The employer has continued to have work available for Ms. Davis, though the employer has at times adjusted work schedules to reduce the risk of spreading COVID-19.

amongst employees. The parties anticipate that Ms. Davis will return to the employment when the threat of COVID-19 subsides. The employer still does not require customers to wear a mask.

Ms. Davis established an original claim for benefits that was effective April 5, 2020. Ms. Davis made weekly claims for the period of April 12, 2020 through September 12, 2020. Ms. Davis received \$311.00 in regular benefits for each of the weeks between April 12, 2020 and August 29, 2020. Ms. Davis received \$600.00 in weekly Federal Pandemic Unemployment Compensation for each of the weeks between April 12, 2020 and July 25, 2020. Ms. Davis received \$300.00 in Lost Wages Assistance (LWA) for each of the five weeks between July 26, 2020 and August 29, 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) 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.

Since the end of March 2020, Ms. Davis has been on a leave of absence that she requested and that the employer approved. The leave of absence is based on Ms. Davis being at increased risk in connection with COVID-19. The evidence establishes that Ms. Davis had not been able to work and available for work within the meaning of the law since she established the original claim for benefits that was effective April 5, 2020, even under the United States Department of Labor's guidance to flexibly interpret this requirement. See Unemployment Insurance Program Letter No. 10-20. Therefore, Ms. Davis 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 September 9, 2020, reference 01, decision is affirmed. The claimant has not met the able and available requirements since establishing the April 5, 2020 original claim for benefits. Regular statement benefits are denied for the period beginning April 5, 2020 through the benefit week that ended September 12, 2020.

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.**



James E. Timberland
Administrative Law Judge

November 17, 2020
Decision Dated and Mailed

jet/scn