

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**SALLY MENKE**

Claimant

**CORNERSTONE SENIOR COMMUNITIES**

Employer

**APPEAL 20A-UI-07936-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/24/20**

**Claimant: Appellant (1R)**

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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, Sally Menke, filed an appeal from the July 16, 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 August 18 2020. The claimant participated personally. The employer participated through Jessica List, administrator.

The administrative law judge took official notice of the administrative records. Claimant Exhibit A was admitted. 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 able to and available for work?

Is the claimant on a leave of absence?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began employment in December 2019 for this employer as a full-time dietary aide. She last performed work on May 21, 2020. The claimant permanently separated from employment on June 11, 2020. The issue of the claimant’s permanent separation has not yet been addressed by the Benefits Bureau.

Prior to separation, the claimant requested, and was approved for a personal leave of absence effective May 22, 2020. The claimant requested a leave of absence with the suggestion of her doctor (Claimant Exhibit A). The claimant has health conditions which make her high risk if she was exposed to COVID-19. She is unable to perform her job duties remotely. The employer had 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 May 24, 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, she must be able to work and available for work as required by the unemployment insurance law. Iowa Code § 96.4(3). The burden is on the claimant to establish that she 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 her current claim due to hardship related to the COVID-19 pandemic. Here, the employer has work available for the claimant. However, the claimant informed the employer she was unable to work due to being high risk if exposed to COVID-19. The employer agreed to allow the claimant time off for that reason. The claimant is considered to be on a leave of absence and is not available for work, according to Iowa law. Therefore, the 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.**

The issue of the claimant's June 11, 2020 permanent separation from employment is remanded to the Benefits Bureau for an initial investigation.

**DECISION:**

The unemployment insurance decision dated July 16, 2020, (reference 01) is affirmed. The claimant is not able and available for work effective May 24, 2020. Regular unemployment insurance benefits funded by the state of Iowa are denied until such time the claimant is able to and available for work.

**REMAND:** The issue of the claimant's June 11, 2020 permanent separation from employment is remanded to the Benefits Bureau for an initial investigation.

**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](http://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.**



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August 21, 2020  
Decision Dated and Mailed

jlb/scn