

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DANIEL G KOSIEROWSKI
Claimant

ALLASH LLC
Employer

APPEAL 21A-UI-08762-JC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/01/20
Claimant: Appellant (1R)

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

STATEMENT OF THE CASE:

The claimant/appellant, Daniel G. Kosierowski, filed an appeal from the March 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 June 11, 2021. The claimant participated. The employer participated through Jessica Fey.

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:

Was the claimant able to and available for work effective November 1, 2020?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant has worked for this employer for approximately three years as a part-time dishwasher. He also works in Le Mars at Walmart. Claimant last performed work for this employer on October 30, 2020. On November 2, 2020, he was diagnosed with COVID-19. He remained hospitalized until December 24, 2020. His doctor did not release him to return to work until April 4, 2021, with a restriction of four hours per day, to work up his strength. Claimant returned to work at Walmart but did not contact Ms. Fey or provide an update after a February 19, 2021 doctor’s note, which stated he was off work until further notice.

The issues of claimant’s permanent separation from this employer, and whether he was partially, temporarily or totally unemployed from Walmart have not yet been addressed by the Benefits Bureau.

Claimant has not made an application for Pandemic Unemployment Assistance (PUA) benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not able to and available for work effective November 1, 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(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

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, the employer had work available for the claimant. However, the claimant informed the employer he was unable to work due to testing positive for COVID-19. Claimant was not released to return to any work until April 4, 2021. Therefore, the claimant is not eligible for regular, state-funded unemployment insurance benefits November 1, 2020 through April 3, 2021.

The issues of whether claimant has permanently separated from this employment and whether claimant' is temporary/totally/partially unemployed from Walmart are remanded to the Benefits Bureau for an initial investigation.

DECISION:

The unemployment insurance decision dated March 16, 2021, (reference 01) is affirmed. The claimant is not able and available for work effective November 1, 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 issues of whether claimant has permanently separated from this employment and whether claimant is temporary/totally/partially unemployed from Walmart are 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

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

You may find additional information about food, housing, and other resources at <https://covidrecoveryiowa.org/> or at <https://dhs.iowa.gov/node/3250>



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June 25, 2021
Decision Dated and Mailed

jlb/lj