

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AMANDA SWAGGERTY
Claimant

TYSON PET PRODUCTS INC
Employer

APPEAL 20A-UI-06535-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/19/20
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Able to and Availability for Work
Iowa Admin. Code r. 871-24.23(10) – Leave of Absence

STATEMENT OF THE CASE:

On June 19, 2020, the claimant filed an appeal from the June 15, 2020 (reference 01) unemployment insurance decision that denied benefits to the claimant based on a leave of absence. The parties were properly notified about the hearing. A telephone hearing was held on July 24, 2020. Claimant participated personally. The employer, Tyson Pet Products Inc., did not participate. Claimant's Exhibit A was admitted. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

ISSUES:

Is the claimant able to and available for work?
Is the claimant on an approved leave of absence?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant has worked for the employer since May 8 or May 9, 2019. She works full-time as an oven operator. She is still employed with this employer.

Claimant was on two separate leaves of absences after April 19, 2020. Claimant was on an approved leave of absence from April 19, 2020 through May 23, 2020. She did not have daycare available for her children due to the COVID 19 pandemic. She returned to work for the week-ending May 30, 2020 and reported her gross wages earned for the week. She did not work for the week-ending June 6, 2020 because her child was quarantined due to possible exposure to COVID 19. Claimant was back working full-time from June 7, 2020 through June 20, 2020. Claimant was then on a second leave of absence from work due to lack of childcare because of the COVID 19 pandemic from June 21, 2020 through July 4, 2020. She has been back to work full-time since July 5, 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", 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.

Iowa Admin. Code r. 871-24.23(23) provides:

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

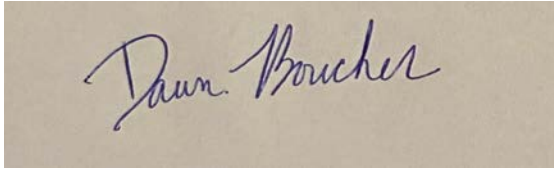
(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

In this case, the claimant notified the employer that she could not work and she was granted two separate leaves of absence. As such, the period of time she is not working and is on a leave of absence is deemed to be a period of voluntary unemployment. Claimant has not established that she is able to and available for work pursuant to Iowa Code § 96.4(3). For the other weeks in which the claimant was working full-time, she has not established that she was able to and available for work pursuant to Iowa Admin. Code r. 871-24.23(23). Therefore, the claimant is not eligible for regular, state-funded unemployment insurance benefits. Regular unemployment insurance benefits funded by the State of Iowa are denied effective April 19, 2020.

DECISION:

The June 15, 2020 (reference 01) unemployment insurance decision is affirmed. The claimant was on a voluntary leave of absence and was not able to work and available for work effective April 19, 2020. Unemployment insurance benefits funded by the State of Iowa are denied until such time as the claimant is able to and available for work.

This decision denies benefits. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.



Dawn Boucher
Administrative Law Judge

July 31, 2020
Decision Dated and Mailed

db/scn

Note to Claimant

- This decision determines you are not eligible for regular unemployment insurance benefits funded by the State of Iowa 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 funded by the State of Iowa under state law, you may qualify for benefits under the Federal Pandemic Unemployment Assistance (“PUA”) section of the Coronavirus Aid, Relief, and Economic Security Act (“Cares Act”) that discusses eligibility for claimants who are unemployed due to the Coronavirus.
- **You will need to apply for PUA to determine your eligibility under the program.**
For additional information on how to apply for PUA go to:
<https://www.iowaworkforcedevelopment.gov/pua-information>.
- If you are denied regular unemployment insurance benefits funded by the State of Iowa and wish to apply for PUA, please visit:
<https://www.iowaworkforcedevelopment.gov/pua-information> and scroll down to “Submit Proof Here.” You will fill out the questionnaire regarding the reason you are not working and upload a picture or copy of your fact-finding decision. Your claim will be reviewed for PUA eligibility. If you are eligible for PUA, you will also be eligible for Federal Pandemic Unemployment Compensation (FPUC) until the program expires. Back payments PUA benefits may automatically be used to repay any overpayment of state benefits. If this does not occur on your claim, you may repay any overpayment by visiting:
<https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment-and-recovery>.
- If you have applied and have been approved for PUA benefits, this decision will **not** negatively affect your entitlement to PUA benefits.