

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**PATRICIA A DEVERS**  
Claimant

**DM SERVICES INC**  
Employer

**APPEAL 21A-UI-12707-AR-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/22/20**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

On May 21, 2021, claimant, Patricia A. Devers, filed an appeal from the May 17, 2021, reference 01, unemployment insurance decision that denied benefits based upon the determination that claimant was on an approved, voluntary leave of absence from her employment with the employer, DM Services, Inc. The parties were properly notified about the hearing held by telephone on July 29, 2021. The claimant participated personally. The employer did not participate.

**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: The claimant was employed part-time in clerical beginning on October 29, 2007. She remains employed with the employer as of the date of her hearing.

Claimant worked on March 16, 2020. That day, the employer began working to clear the building due to the onset of the COVID-19 pandemic. The employer gave people who had the capability the option to work from home. Alternatively, it gave employees who could not work from home the option to take a voluntary leave. Claimant did not have the technological capability to work from home due to internet access. Accordingly, she chose voluntary leave. Claimant did not take the leave with the recommendation of a physician, but did note that she has a number of underlying medical conditions that make her susceptible to COVID-19. She was careful about her exposure throughout the course of the pandemic.

In early 2021, the employer began discussing whether it could make arrangements for its employees who wanted to work from home but could not. However, nothing came of this conversation, and claimant was never able to work from home.

After she was fully vaccinated, claimant returned to work in the same position, with the same wages, as of June 21, 2021.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant not able to work and available for work for the period in question.

Iowa Code § 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)j(1) and (2) provides:

Benefit 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.

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j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

In order to be eligible for benefits, an individual claiming benefits must be able to work, available for work, and actively and earnestly seeking work. In this case, claimant and the employer agreed that she would be on leave due to the pandemic. There is no indication that the employer lacked work for claimant during her period of leave. The administrative law judge is sympathetic to claimant's efforts to protect herself from COVID-19. However, she is considered to be on a leave of absence, and is not available for work under Iowa law. Accordingly, benefits are denied.

**DECISION:**

The May 17, 2021, (reference 01) unemployment insurance decision is affirmed. The claimant is not able to work and available for work effective March 22, 2020. Benefits are denied.



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Alexis D. Rowe  
Administrative Law Judge

August 03, 2021  
Decision Dated and Mailed

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**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. Individuals who do not qualify for regular unemployment insurance benefits, but who are unemployed or continue to be unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.

**ATTENTION:** On May 11, 2021, Governor Reynolds announced that Iowa will end its participation in federal pandemic-related unemployment benefit programs effective June 12,

2021. The last payable week for PUA in Iowa will be the week ending June 12, 2021. Additional information can be found in the press release at <https://www.iowaworkforcedevelopment.gov/iowa-end-participation-federal-unemployment-benefit-programs-citing-strong-labor-market-and>.

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

Iowa Finance Authority also has additional resources at <https://www.iowafinance.com/about/covid-19-ifa-recovery-assistance/>