

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MASON A GUYER

Claimant

APPEAL NO. 20A-UI-09997-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MIRAGE PROPERTIES CORPORATION

Employer

OC: 04/05/20

Claimant: Appellant (1)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Mason Guyer filed a timely appeal from the August 6, 2020, reference 01, decision that denied benefits effective April 5, 2020, based on the deputy's conclusion that the claimant requested and was granted a leave of absence, was voluntarily unemployed and unavailable for work. After due notice was issued, a hearing was held on October 5, 2020. Claimant participated. Rita Vassar represented the employer. Exhibits A, B and C 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 was able to work and available for work for the period of April 5, 2020 through July 18, 2020.

Whether the claimant was on a leave of absence that he requested and the employer approved during the period of April 5, 2020 through July 18, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Mason Guyer established an original claim for benefits that was effective April 5, 2020. The claim is based on an alternate base period that includes the first quarter of 2020. Iowa Workforce Development set Mason Guyer's weekly benefit amount for regular benefits at \$265.00. Mason Guyer made weekly claims for each of the weeks between April 5, 2020 and July 18, 2020. Mason Guyer received \$265.00 in regular benefits and \$600.00 in Federal Pandemic Unemployment Compensation (FPUC) for each of the claim weeks.

Mason Guyer is employed by Mirage Properties Corporation as a full-time maintenance person. Mason Guyer's father, Grant Guyer, is the maintenance supervisor and purchasing agent for the employer. Barry Smith is the business owner. The employer owns and operates multiple apartment complexes. Mason Guyer last performed work for the employer on Friday March 27, 2020. Mason Guyer has multiple sclerosis and has a compromised immune system. On or before March 27, 2020, Mason Guyer discussed with his father, Grant Guyer, whether it was wise for Mason Guyer to continue to perform work for the employer in the context of the COVID-

19 pandemic. Mason Guyer was aware that his underlying medical condition placed him at increased risk of contracting COVID-19 and at increased risk in the event that he contracted the illness. Following a discussion between Grant Guyer and Barry Smith, Grant Guyer told Mason Guyer the employer had agreed that Mason Guyer would not need to report for work until the COVID-19 pandemic subsided. The employer continued to have work available, as well as personal protective equipment to hinder the spread of COVID-19. Following the August 10, 2020 derecho, the employer had a significant increase in empty apartments and an increased ability to isolate Mason Guyer in the workplace, if Mr. Guyer was willing to return to the employment.

In June 2020, Mason Guyer's medical provider reinforced at that time that it was a good idea for Mason Guyer to remain off work until the COVID-19 positivity rate decreased.

Mr. Guyer has provided a memorandum from his healthcare provider, Jill Miller, A.R.N.P., of the Department of Neurology at Physicians' Clinic of Iowa, P.C. The note, dated September 28, 2020, indicates a diagnosis of multiple sclerosis and that Mr. Guyer has a compromised immune system. The memorandum indicates the provider saw Mr. Guyer in June 2020 and advised him at that time that it would be best to isolate from large groups and social events until the COVID-19 positivity rate decreased. The note further indicates that it had been and would be in Mr. Guyer's best interests to remain off work from April 2020 to November 2020, but that Mr. Guyer could return to work when he felt comfortable doing so.

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.

The weight of the evidence in the record establishes that Mr. Guyer has been on a leave of absence since the end of March 2020 due to being at increased risk for COVID-19 and complications if he contracts COVID-19. Claimant has not established he was able to and available for work within the meaning of the law during the period of April 5, 2020 through July 18, 2020, even under the United States Department of Labor's guidance to flexibly interpret this requirement. See Unemployment Insurance Program Letter No. 10-20. The administrative law judge notes that Mr. Guyer's appeal letter references a continued need to be off work due to the underlying medical condition, but omits reference to a layoff. The weight of the evidence indicates that the employer has had work available to Mr. Guyer, if he is comfortable with returning to the workplace to perform it. The claimant is not eligible for regular, state-funded unemployment insurance benefits for the period of April 5, 2020 through July 18, 2020.

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 August 6, 2020, reference 01, decision is affirmed. The claimant was not able to work and available for work within the meaning of the law during the period of April 5, 2020 through July 18, 2020 and is not eligible for regular benefits for that period.



James E. Timberland
Administrative Law Judge

October 7, 2020
Decision Dated and Mailed

jet/sam

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.**