

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DARRELL J FEIGERT
Claimant

APPEAL NO. 21A-UI-14005-B2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DOLLAR TREE STORES INC
Employer

OC: 03/21/21
Claimant: Appellant (4)

Iowa Admin. Code ch. 871 r. 24.23(10) – Leave of Absence
Iowa Code § 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated June 10, 2021 reference 02, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on August 17, 2021. Claimant participated personally. Employer failed to respond to the hearing notice and did not participate. Claimant's Exhibits A-C were admitted into evidence.

ISSUE:

Whether claimant is able and available for work?

Whether claimant is on an approved leave of absence?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant worked as a part time employee for Dollar Tree Stores. Claimant asked for and received a leave of absence from this position on March 13, 2020 as claimant was concerned about Covid. Claimant was separated from his job 5 weeks after he went on leave.

In September 2020 claimant had a VA doctor write a statement indicating claimant is at heightened risk for Covid as a result of comorbidity issues. There was no further statement from a doctor admitted into testimony.

Claimant got his second Covid shot on April 27, 2021. After he received his second shot, he reapplied for a job with Dollar Tree Stores, and was rehired in May 2021.

REASONING AND CONCLUSIONS OF LAW:

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 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. 871-24.23(35) provides:

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

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

Inasmuch as the claimant was concerned about Covid, and not willing to work during Covid, he was not able and available to work until after he'd received his second Covid shot. Only then did he attempt to gain employment. Benefits shall be allowed effective April 28, 2021.

DECISION:

The decision of the representative dated June 10, 2021, reference 02 is modified in favor of claimant. Claimant is deemed able and available for work and eligible to receive unemployment insurance benefits, effective April 28, 2021, provided claimant meets all other eligibility requirements.



Blair A. Bennett
Administrative Law Judge

August 20, 2021
Decision Dated and Mailed

bab/ol