

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**SHARON WEBB**  
Claimant

**HY VEE INC**  
Employer

**APPEAL 21A-UI-09435-WG-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

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

Iowa Code § 96.4(3) – Able and Available  
Iowa Admin. Code r. 871-24.22(2)j – Benefit Eligibility Conditions – Leave of Absence  
Iowa Admin. Code r. 871-24.23(10) – Availability Disqualifications – Leave of Absence

**STATEMENT OF THE CASE:**

The claimant/appellant, Sharon Webb, filed an appeal from the March 29, 2021, (reference 01) unemployment insurance decision that concluded she was not able and available for work and, therefore, not currently eligible for unemployment insurance benefits. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for June 4, 2021. Claimant participated personally at the hearing. The employer participated through its representative, Judy Berry and its witness, Danielle Grimm. Claimant offered Exhibit 1, which was received into the evidentiary record without objection.

**ISSUE:**

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

**FINDINGS OF FACT:**

The facts are relatively undisputed. Claimant began working for the employer on May 10, 2016. She worked full-time as a cashier for the employer. When the Covid-19 pandemic hit Iowa, claimant took a leave of absence from April 2020 through October 2020. The employer consented to that leave of absence.

In October 2020, claimant elected to return to work. She began working at a different Hy-Vee location at that time. She worked again as a cashier until February 2, 2021. Due to underlying health conditions, claimant was concerned about exposure to Covid-19 and her physician recommended she avoid public interaction. See Exhibit 1. After returning to work for the employer, claimant believed that the general public presenting to the store was not observing mask mandates or social distancing properly. She was concerned for her health.

On February 2, 2021, claimant requested a second leave of absence from the employer due to concerns about contracting Covid-19. Again, the employer granted the leave of absence. Claimant was off work from February 2, 2021 through mid-May 2021. After obtaining her

second Covid-19 vaccination and becoming fully vaccinated, claimant elected to return to work and the employer permitted her to return to work.

I find that claimant was on an approved leave of absence for personal health concerns between February 2, 2021 and mid-May 2021. Claimant's leave of absence was approved by the employer and the employer left claimant's job open for her to return after her leave of absence.

## **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant was not able to work and available for work during the relevant period of time for which benefits were sought.

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)(1), (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.

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.

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 claimant requested and was given a leave of absence as a result of claimant's concerns about contracting Covid-19 in her position as a cashier. The employer granted the leave of absence, which commenced on February 2, 2021. Claimant has now returned to work after her leave of absence. Therefore, I conclude she was not able and available for work during the relevant time period for which benefits were sought. Accordingly, benefits are denied.

**DECISION:**

The March 29, 2021, (reference 01) decision is affirmed. The claimant was not able to work and available for work effective February 2, 2021 for all time periods for which benefits were sought.



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William H. Grell  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515)478-3528

June 21, 2021  
Decision Dated and Mailed

whg/ol

**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 were 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've received so far.**