

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**STEVEN A FISHER**

Claimant

**IA DEPT OF CORRECTIONS N CENTRAL**

Employer

**APPEAL 21R-UI-16270-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/03/21**

**Claimant: Appellant (4)**

Iowa Code § 96.4(3) – Able to and Available for Work

Iowa Code § 96.1A(37) – Temporary Unemployment

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the March 2, 2021 (reference 02) unemployment insurance decision that found claimant was not eligible for unemployment benefits effective January 3, 2021 as he was on a voluntary leave of absence from work. An original appeal hearing was scheduled for May 21, 2021. A default decision was entered in Appeal No. 21A-UI-07415-DB-T. Claimant filed an appeal to the Employment Appeal Board (EAB). The EAB remanded the matter back to the Appeals Bureau for a new hearing date. The parties were properly notified of the new hearing date. A telephone hearing was held on September 14, 2021. The claimant participated personally. The employer was represented by Barbara Buss and participated through witnesses Jolene Beenen and Adam Yetmar. Claimant's Exhibits A, B, C, and D were admitted. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

**ISSUES:**

Was the claimant able to and available for work?

Was the claimant temporarily unemployed?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for this employer as a full-time correctional officer on December 10, 2018. On January 1, 2021, claimant's spouse, whom he resided with in the same household, tested positive for COVID-19. Claimant informed his employer on January 1, 2021 that he was exposed to a person who tested positive for COVID-19. Claimant was scheduled to be off work on holiday on January 1, 2021; however, his vacation request was changed to leave without pay due to the COVID-19 exposure and pursuant to the employer's policy.

Claimant was off work from January 1, 2021 through January 17, 2021. He returned for his regular full-time shift on January 18, 2021. Claimant had illness symptoms himself including feeling weak and body aches. He tested negative for COVID-19 on January 2, 2021 but he tested positive for influenza B at that same time. See Exhibit C. According to his medical

provider, claimant was required to remain off work and self-isolate for seven days and be symptom free for at least 24 hours before returning to work. See Exhibit C.

The employer's policy required the claimant to test negative for COVID-19 three times over the course of 14 days in order to return to work. Claimant tested negative for COVID-19 on January 2, 2021; he tested negative for COVID-19 on January 7, 2021; and he tested negative for COVID-19 on January 14, 2021. He was notified of his test results from January 14, 2021 on January 17, 2021. He returned to work for his regular full-time shift on January 18, 2021. Claimant did not earn any wages, holiday, pension or other pay during his time off from work.

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

For the reasons that follow, the administrative law judge concludes as follows:

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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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 Code section 96.1A(37) provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

Iowa Admin. Code r. 871-24.22(1) 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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

b. Interpretation of ability to work. The law provides that an individual must be able to work to be eligible for benefits. This means that the individual must be physically able to work, not necessarily in the individual's customary occupation, but able to work in some reasonably suitable, comparable, gainful, full-time endeavor, other than self-employment, which is generally available in the labor market in which the individual resides.

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(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.

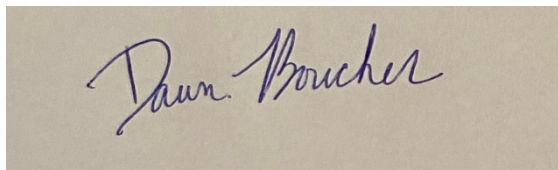
Claimant did not request a leave of absence from work. However, claimant must establish that he was able to work and available for work when he is totally unemployed. From January 2, 2021 through January 9, 2021, claimant was experiencing symptoms of influenza B and was instructed by his own medical provider to self-quarantine for seven days. As such, for the one-week period beginning January 3, 2021 and ending January 9, 2021, the claimant was unavailable for work as he was under the care of a medical practitioner and was not released as being able to work. Regular unemployment insurance benefits are denied for the one-week period beginning January 3, 2021 and ending January 9, 2021 pursuant to Iowa Code § 96.4(3). Claimant may apply for Federal Pandemic Unemployment Assistance (PUA) benefits should he choose to do so.

After his initial seven-day quarantine that was instructed by his medical provider, the claimant was unable to return to work because the employer's policy regarding mitigation of COVID-19 required that he test negative on two other occasions and only return to work after a 14-day quarantine. As such, the claimant was not working from January 10, 2021 through January 16, 2021 due to the employer's policy regarding the COVID-19 emergency. Iowa Code § 96.1A(37)c provides that an individual is deemed temporarily unemployed if, for a period verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to...emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time. That is the case here. From January 10, 2021 through the week-ending January 16, 2021, claimant was temporarily unemployed due to the employer's emergency protocols relating to the COVID-19 pandemic emergency. As such, regular unemployment insurance benefits are allowed for the one-week period beginning January 10, 2021 and ending January 16, 2021, provided claimant remained otherwise eligible.

**DECISION:**

The March 2, 2021 (reference 02) unemployment insurance decision is modified in favor of the claimant/appellant. The claimant was not able to work or available for work effective January 3, 2021 through January 9, 2021 and regular unemployment insurance benefits funded by the State of Iowa are denied for that one-week period.

Claimant was temporarily laid off due to emergency during the one-week period of January 10, 2021 through January 16, 2021 and regular unemployment insurance benefits are allowed for that one-week period, provided the claimant remains otherwise eligible.



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Dawn Boucher  
Administrative Law Judge

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September 17, 2021  
Decision Dated and Mailed

db/kmj

**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.