

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

FLOYD W JENSEN
Claimant

ENTERPRISE RENT A CAR COMPANY
Employer

APPEAL 21A-UI-05753-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/22/20
Claimant: Appellant (4R)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions
Iowa Admin. Code r. 871-24.23(10) – Able & Available – Leave of Absence

STATEMENT OF THE CASE:

On February 22, 2021, Floyd W. Jensen (claimant) filed an appeal from the February 16, 2021, reference 01, unemployment insurance decision that denied benefits effective December 27, 2020, based upon the determination he was on an approved leave of absence with Enterprise Rent-A-Car Company (employer) and was not able to and available for work. After due notice was issued, a telephone hearing was held on April 28, 2021. The claimant participated personally. The employer participated through Cortney Gallahue, Fleet Logistics Supervisor. No exhibits were offered into the record.

ISSUE:

Was the claimant able to work, available for work, and actively and earnestly seeking work effective December 27, 2020?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began working for the employer in September 2018, as a part-time driver. On or about March 22, 2020, the employer furloughed all drivers due the COVID-19 pandemic. The claimant filed his claim for unemployment insurance benefits at that time.

At the end of June, the employer contacted the claimant and asked him to return to work. The claimant declined due to his fear of contracting COVID-19; however, his doctor had not restricted his ability to work at that time. Whether the claimant refused a suitable offer of work or if he was able to and available for work effective June 28, 2020, has not been investigated or adjudicated by the Benefits Bureau.

The claimant returned to work at the end of September. On or about December 24, the claimant learned he had been exposed to someone with COVID-19. The employer would not allow him to return to work for two weeks. The claimant reactivated his claim for benefits effective December 27.

During his quarantine, the claimant lost or came close to losing close friends and family to COVID-19. He decided he did not want to return to work due to his fear of contracting the virus. The employer allowed him to remain off work, even though he did not properly complete a leave of absence request form. The employer regularly contacted the claimant to see when he would be returning to work.

On March 1, 2021, the claimant's doctor removed him from work until further notice. The claimant's doctor has not released him to return to work and he remains employed with the employer. The claimant filed a new claim for benefits effective March 21. Whether the claimant is able to and available for work in the current claim year has not been investigated or adjudicated by the Benefits Bureau.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was temporarily unemployed from December 27, 2020, through January 9, 2021 and considered able to and available for work. Benefits are allowed for the two-week period, if the claimant is otherwise eligible. The claimant was totally unemployed and not able to and available for work effective January 10, 2021, and benefits are denied.

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 Code section 96.19(38) provides:

Definitions.

38. 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 provides, in relevant part:

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.

(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 provides, in relevant part:

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.

...

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

...

(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.

...

(41) The claimant became temporarily unemployed, but was not available for work with the employer that temporarily laid the claimant off. The evidence must establish that the claimant had a choice to work, and that the willingness to work would have led to actual employment in suitable work during the weeks the employer temporarily suspended operations.

The claimant was temporarily unemployed from December 27, 2020, through January 9, 2021 because the employer did not have work available for him due to the public health emergency. He is considered able to and available for work during that time. Benefits are allowed, provided he is otherwise eligible.

At the end of his employer-mandated quarantine, the claimant became totally unemployed when he did not return to work and the employer had work available. An individual claiming benefits has the burden to prove that he is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. A leave of absence does not solely consist of leaves established with formal documentation, it can include times when the employee has

indicated they are unable or unwilling to work and the employer does not end the claimant's employment. The claimant told the employer that that he would not be returning to work and the employer allowed him to take the time off by maintaining the employment relationship. The claimant was voluntarily unemployed and not eligible for regular unemployment insurance benefits. Benefits are denied effective January 10, 2021.

Whether the claimant refused a suitable offer of work or was able to and available for work effective June 28, 2020, is remanded to the Benefits Bureau for a fact-finding interview and unemployment insurance decision to include both parties.

Whether the claimant is able to and available for work in the claim year that began March 21, 2021, is remanded to the Benefits Bureau for review and processing.

DECISION:

Regular Unemployment Insurance Benefits Under State Law

The February 16, 2021, reference 01, unemployment insurance decision is modified in favor of the appellant. The claimant was temporarily unemployed from December 27, 2020, through January 9, 2021, and he is considered able to work and available for work during that time. Benefits are allowed, provided he is otherwise eligible. The claimant was totally unemployed and not able to and available for work after January 9. Therefore, benefits are denied effective January 10, 2021.

Pandemic Unemployment Assistance (PUA) Under the Federal CARES Act

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, he may be eligible for federally funded unemployment insurance benefits under the CARES Act. Section 2102 of the CARES Act, which created a temporary federal program called Pandemic Unemployment Assistance (PUA) This decision does not address whether the claimant is eligible for PUA. For a decision on such eligibility, the claimant must self-certify for PUA, as noted in the instructions provided in the "Note to Claimant" on the last page of the decision.

REMANDS:

Whether the claimant refused a suitable offer of work or was able to and available for work effective June 28, 2020, is remanded to the Benefits Bureau for a fact-finding interview and unemployment insurance decision to include both parties.

Whether the claimant is able to and available for work in the claim year that began March 21, 2021, is remanded to the Benefits Bureau for review and processing.



Stephanie R. Callahan
Administrative Law Judge

May 3, 2021
Decision Dated and Mailed

src/kmj

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 unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to self-certify for PUA to determine your eligibility under the program.** Additional information on how to self-certify 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.