

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ANGELA JESSEN**  
Claimant

**HY-VEE INC**  
Employer

**APPEAL 20A-UI-04926-HP-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/29/20**  
**Claimant: Appellant (1)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
871 IAC 24.23(10) – Leave of Absence

**STATEMENT OF THE CASE:**

Claimant Angela Jessen filed an appeal from a May 22, 2020 (reference 01) unemployment insurance decision that denied benefits because she was on a leave of absence from work and not available for work. The parties were properly notified of the hearing. A telephone hearing was held on June 22, 2020. Angela Jessen appeared and testified. Barbara Buss represented the employer, Hy-Vee Inc. (“Hy-Vee”). Jordan Miller appeared and testified on behalf of Hy-Vee. Exhibit 1 was admitted into the record. I took administrative notice of Jessen’s unemployment insurance benefits records maintained by Iowa Workforce Development.

**ISSUES:**

Was the claimant on a leave of absence from work and not available for work?  
Is the claimant able to and available for work?

**FINDINGS OF FACT:**

Jessen commenced her most recent employment with Hy-Vee on October 13, 2013. Jessen is a certified pharmacy technician who works 32 hours per week.

Jessen’s adult daughter is a person with spina bifida, cystic fibrosis, neurogenic bladder, intellectual disability, anxiety, and depression who needs constant supervision. Jessen’s daughter uses a wheelchair for ambulation and attends Schmoker Adult Day program (“Schmoker”). Schmoker closed on March 13, 2020. Jessen’s daughter is at-risk for complications from Covid-19 due to her respiratory condition.

Jessen requested an unpaid leave of absence from Hy-Vee starting on March 23, 2020, to care for her daughter. Hy-Vee approved Jessen’s request and granted her a family medical leave of absence under the Family and Medical Leave Act from March 23, 2020 through June 12, 2020. Jessen requested additional unpaid leave through June 28, 2020, which Hy-Vee granted.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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", subparagraph (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".

871 Iowa Administrative Code 24.22(1)-(3) provides:

**Benefit 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.

**24.22(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.

**24.22(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.

**24.22(3) Earnestly and actively seeking work.** Mere registration at a workforce development center does not establish that the individual is earnestly and actively seeking work. It is essential that the individual personally and diligently search for work. It is difficult to establish definite criteria for defining the words earnestly and actively. Much depends on the estimate of the employment opportunities in the area. The number of employer contacts which might be appropriate in an area of limited opportunity might be totally unacceptable in other areas. When employment opportunities are high an individual may be expected to make more than the usual number of contacts. Unreasonable limitations by an individual as to salary, hours or conditions of work can indicate that the individual is not earnestly seeking work. The department expects each individual claiming benefits to conduct themselves as would any normal, prudent individual who is out of work.

To be able to work, "[a]n 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." *Sierra v. Emp't Appeal Bd.*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); 871 IAC 24.22(1).. "An evaluation of an individual's ability to work for the purposes of determining that individual's eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides." *Sierra* at 723. The court in *Gilmore v. Emp't Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that "[i]nsofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

871 Iowa Administrative Code 24.23(10) provides,

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

**24.23(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.

Jessen's adult daughter is a person with severe disabilities who requires constant care. When Schmoker closed, her daughter's adult day care program, Jessen requested an unpaid leave of absence to care for her daughter, which Hy-Vee granted. As of the date of the hearing Jessen had not returned to work. I find Hy-Vee granted Jessen an unpaid leave of absence and she has been voluntarily unemployed and not available for work since March 23, 2020 and she is disqualified from receiving regular unemployment benefits.

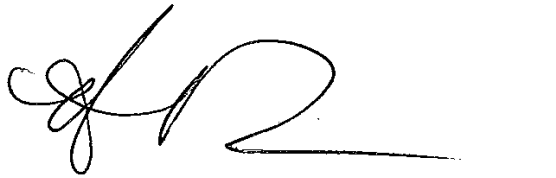
Jessen's absence from work is directly due to the pandemic. Her adult daughter is a person with severe disabilities, including cystic fibrosis, which places her at higher risk of complications from Covid-19. Jessen requested a leave of absence when her daughter's adult day care program closed to care for her daughter, who requires constant care. **While the claimant may not be eligible for regular State of Iowa unemployment insurance benefits, the claimant may be eligible for unemployment insurance benefits that have been made available to claimants under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"). The Pandemic Unemployment Assistance ("PUA") section of the Cares Act discusses eligibility for claimants who are unemployed due to the Coronavirus. For claimants who**

**are ineligible for regular unemployment insurance benefits under Iowa Code Chapter 96, they may be eligible under PUA.**

**Note to Claimant:** If this decision determines you are not eligible for regular unemployment insurance benefits and 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 are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (“PUA”). **You will need to apply for PUA to determine your eligibility under the program. Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.** This decision denies benefits. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.

**DECISION:**

The May 22, 2020 (reference 01) unemployment insurance decision denying unemployment insurance is affirmed. The claimant is disqualified from receiving unemployment insurance benefits as of March 29, 2020 because she requested and was granted a leave of absence and was voluntarily unemployed and not available for work.



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July 1, 2020  
Decision Dated and Mailed

hlp/sam