

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RICHARD M BENGTON
Claimant

SAPP BROS INC
Employer

APPEAL 21A-UI-01467-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/22/19
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

On December 21, 2020, claimant Richard M. Bengtson filed an appeal from the December 15, 2020 (reference 03) unemployment insurance decision that denied benefits based upon a determination that claimant was not eligible for benefits because he was on an approved leave of absence. The parties were properly notified of the hearing. A telephonic hearing was held on Friday, February 19, 2021. The claimant, Richard M. Bengtson, participated. The employer, Sapp Brothers, Inc., participated through Michael Gell, Human Resources Business Partner.

ISSUES:

Was the claimant able to and available for work for the period in question?
Was the claimant on an approved leave of absence?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time, most recently as a driver, beginning March 25, 2020. On September 22, 2020, claimant contracted COVID-19. He was sick from September 22 through approximately October 20. On October 21, claimant returned to his doctor and got a release clearing him to return to work. The employer follows the CDC guidelines and requires all employees who test positive for COVID-19 to quarantine for a minimum of between ten and fourteen days.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was not able to work or available for work from September 27, 2020, through October 17, 2020, because he was on a leave of absence.

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(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.

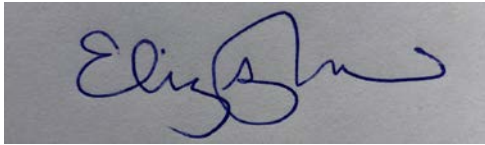
Here, employer has work available for claimant. However, claimant informed the employer he was unable to work due to COVID-19. Employer agreed to allow claimant time off for that reason. Claimant has not established he was able to and available for work, even under the United States Department of Labor's guidance to flexibly interpret this requirement. See Unemployment Insurance Program Letter No. 10-20.

Claimant is considered to be on a leave of absence due to COVID-19 and is not available for work. Therefore, claimant is not eligible for regular, state-funded unemployment insurance benefits.

Even though claimant is not eligible for regular unemployment insurance benefits under state law, he may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. Claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

DECISION:

The December 15, 2020 (reference 03) unemployment insurance decision is affirmed. Claimant was on a leave of absence from September 27, 2020, through October 17, 2020, and regular unemployment insurance benefits are withheld for those weeks.

A handwritten signature in blue ink, appearing to read "Elizabeth Johnson", is shown on a light-colored background.

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

March 1, 2021
Decision Dated and Mailed

lj/scn

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 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>.