

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

WILMA M ALBEE
Claimant

CDS GLOBAL INC
Employer

APPEAL 20A-UI-14461-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 05/26/19
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:

Wilma M Albee, the claimant/appellant, filed an appeal from the October 28, 2020, (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on January 12, 2021. Ms. Albee participated and testified. The employer participated through Nicki Sorenson, workforce manager and Aldina Sehic, call center manager and Ms. Albee's supervisor's

ISSUES:

Is Ms. Albee able to and available for work?
Is Ms. Albee on a voluntary leave of absence?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Albee worked for the employer as a part-time customer service representative. From May 24, 2019 through August 1, 2019 Ms. Albee was on a temporary layoff due to lack of work. She returned to work on August 2, 2019.

In March 2020, the United States declared a public health emergency because of the COVID 19 pandemic. On March 11, Ms. Albee requested and Ms. Sehic, her supervisor, agreed that Ms. Albee would stay home from work, unpaid, due to Ms. Albee's concern about the pandemic given her underlying health conditions and her age. Ms. Albee and Ms. Sehic spoke again on March 23. Ms. Albee expressed her concern about returning to work due to the pandemic. Ms. Sehic explained that Ms. Albee could file for unemployment insurance (UI) benefits.

Days before June 1, Ms. Sorenson contacted Ms. Albee to ask her to return to work. Ms. Albee again expressed concern about returning to work due to the pandemic. Ms. Sorenson then approved Ms. Albee for a leave of absence until July 1. On July 3, Ms. Sorenson again contacted Ms. Albee to ask if she was returning to work. Ms. Albee told Ms. Sorenson that she would not be returning to work and that she retired. Ms. Albee no longer looked for work after July 3 since she had retired.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, this administrative law judge concludes that claimant is not able and available for work effective March 11, 2020.

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.

In this case, Ms. Albee and the employer agreed on March 11, 2020 that she would take time off of work due to her concerns about the pandemic. Ms. Albee's concerns are understandable. After July 3, 2020, Ms. Albee voluntarily took herself out of the workforce by retiring. Ms. Albee has not established that she was able to and available for work effective March 11, 2020 even under the United States Department of Labor's guidance to flexibly interpret this requirement. See Unemployment Insurance Program Letter No. 10-20. Therefore, Ms. Albee is not eligible for regular, state-funded unemployment insurance benefits effective March 11, 2020.

Even though Ms. Albee is not eligible for regular unemployment insurance benefits under state law, she 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. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed.

DECISION:

The October 28, 2020, (reference 02) unemployment insurance decision is affirmed. Ms. Ablee is not able to and available for work effective March 11, 2020, and regular, state-funded unemployment insurance benefits are denied.



Daniel Zeno
Administrative Law Judge

January 29, 2021
Decision Dated and Mailed

dz/scn

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 are currently 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 r**