

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JUNE MARKHAM
Claimant

HY-VEE INC
Employer

APPEAL 21A-UI-00408-SN-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/26/20
Claimant: Appellant (2)

Iowa Code § 96.4-3 – Able and Available
Iowa Admin. Code r. 871-24.23 (10) – Voluntary Leave of Absence

STATEMENT OF THE CASE:

On November 10, 2020, claimant appealed the representative's November 5, 2020, decision (reference 01), that denied benefits because it determined she was not available to work as of July 26, 2020 due to requesting and being granted a leave of absence. A telephone hearing was held on February 8, 2021. The claimant participated personally. The employer participated through Hearing Representative Barbara Buss, Human Resources Manager Jackie Kuennen, and Market Grille Manager Christian Jacobs.

ISSUES:

Whether the claimant is available for work? Whether the claimant was on an approved leave of absence?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that:

On October 10, 2017, the claimant started working for the employer as a full-time kitchen clerk. The claimant's hourly wage is \$14.80 per hour.

The employer has a Covid19 spread reduction practice which requires an employee to quarantine for 14 days if they have someone who tested positive for Covid19 living in the same household.

In late-July 2020, the claimant reported to Market Grille Manager Christian Jacobs that her daughter tested positive for Covid19. Mr. Jacobs directed the claimant to talk to Store Manager Mike Silvas. Mr. Silvas directed the claimant to take a Covid19 test and to talk to Human Resources Generalist Mary Severson, who was filling in for HR Manager Jackie Kuennen, regarding her test results once she received them.

On July 28, 2020, the employer placed the claimant on job protective leave from July 28, 2020 to August 10, 2020. The claimant did not request a leave of absence. The employer placed her on a leave of absence as a means to comply with its spread reduction practice.

On July 30, 2020, the claimant was scheduled to get a Covid19 test. Prior to her shift that day, the claimant informed Assistant Kitchen Manager Noah Ottenhausen that she was scheduled to receive a test later that day.

On July 31, 2020, the claimant received a negative test result from her Covid19 test. The claimant informed Ms. Severson of her test results. Ms. Severson said the claimant would have to remain away until August 10, 2020.

The claimant used paid time off to cover an eight hour shift occurring on July 29, 2020, an eight hour shift occurring on July 30, 2020, and six hours of a shift occurring on July 31, 2020. The administrative record reflects she reported earning \$108 for the week ending August 1, 2020.

On August 13, 2020, the claimant returned to work as scheduled. The claimant did not ever experience symptoms of an illness such that she could not perform her duties. She was otherwise able and available to perform work for the employer during this period. Work would have been provided to the claimant if she had not been subject to the employer's Covid19 spread reduction practice.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was able and available as of July 26, 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. 871-24.22(1)a 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.

Iowa Admin. Code r. 871-24.23 (1) and (10) provide:

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

(1) An individual who is ill and presently not able to perform work due to illness.

(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.

Iowa Code section 96.19(38) 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.

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979).

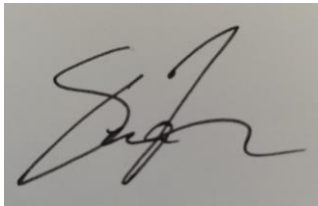
To be partially unemployed for any given week, claimant must work less than 36 hours per week (claimant's regular full-time schedule) and earn less than \$427.00 (claimant's weekly benefit

plus \$15.00). Although the claimant used paid time off during the time she was away from work, she only earned \$108.00 for the week ending August 1, 2020, so she was partially unemployed for this period.

The claimant is correct that the employer initiated this leave of absence. The claimant was not ill such that she could not perform work either. As a result, the claimant is entitled to benefits effective July 26, 2020.

DECISION:

The representative's November 5, 2020, decision (reference 01) is reversed. The claimant is entitled to benefits as of July 26, 2020.



Sean M. Nelson
Administrative Law Judge
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February 19, 2021
Decision Dated and Mailed

smn/mh