

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**ANTHONY J BUSS**

Claimant

**APPEAL 21A-UI-24225-S2-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEYS MARKETING COMPANY**

Employer

**OC: 04/12/20**

**Claimant: Appellant (4)**

Iowa Code § 96.4(3) – Ability to and Availability for Work

Iowa Admin. Code r. 871-24.23(10) – Able & Available – Availability Disqualifications

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the October 25, 2021, (reference 01) unemployment insurance decision that denied benefits based upon a finding that claimant was on a voluntary leave of absence. The parties were properly notified about the hearing. A telephone hearing was held on December 28, 2021, and was consolidated with the hearing for appeal 21A-UI-24226-S2-T. Claimant Anthony J. Buss participated and was represented by attorney Stuart Higgins. Grant Rodgers observed on behalf of claimant. Employer Casey's Marketing Company participated through assistant manager Shannon Bly. Official notice was taken of the administrative record.

**ISSUES:**

Is the claimant able to and available for work?

Is the claimant on a voluntary leave of absence?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer in August 2018. Claimant worked for employer as a full-time cashier until June 11, 2020, when he was discharged.

In March 2020, claimant requested a leave of absence due to his health. He suffers from underlying health conditions which place him at high risk for COVID-19. Employer granted the request. Claimant remained in contact with employer during the leave. Employer had full-time work available for claimant if he did not have concerns regarding his underlying health conditions.

Claimant filed an original claim for unemployment insurance benefits effective April 12, 2020. Claimant filed weekly claims beginning April 12, 2020. Effective June 14, 2020, claimant was actively searching for work during each of the weeks in which he filed weekly continued claims for benefits. He had no barriers to employment effective June 14, 2020.

Claimant's separation from employment has been addressed in Appeal No. 21A-UI-16230-AR-T.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work between April 12, 2020, and June 13, 2020. Claimant is able to and available for work effective June 14, 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.

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.

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.

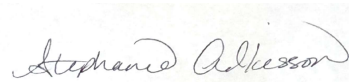
Here, claimant was on a leave of absence due to health concerns related to COVID-19, effective April 12, 2020, through June 11, 2020. Claimant has not established is able to and available for work during this period, even under the United States Department of Labor's guidance to flexibly interpret this requirement. See Unemployment Insurance Program Letter No. 10-20. Therefore, claimant is not eligible for regular, state-funded unemployment insurance benefits between April 12, 2020, and June 13, 2020.

Claimant has credibly testified that he has been able to and available for work since June 14, 2020. Since that time, claimant actively searched for work each week he filed a claim. The administrative law judge finds claimant is able to and available for work effective June 14, 2020, and benefits are allowed effective June 14, 2020.

**DECISION:**

The October 25, 2021, (reference 01) unemployment insurance decision is modified in favor of the appellant. Claimant is not available for work between April 12, 2020, and June 13, 2020, and regular, state-funded unemployment insurance benefits are denied during this period.

Claimant is able to and available for work effective June 14, 2020. Benefits are allowed effective June 14, 2020, provided claimant is otherwise eligible.



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Stephanie Adkisson  
Administrative Law Judge  
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January 25, 2022  
Decision Dated and Mailed

sa/kmj