

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHASE M SALTZMAN
Claimant

TARGET CORPORATION
Employer

APPEAL 20A-UI-13777-JC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/19/20
Claimant: Appellant (1R)

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

STATEMENT OF THE CASE:

The claimant/appellant, Chase M. Saltzman, filed an appeal from the October 27, 2020 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on December 31, 2020. The claimant participated. The employer, Target Corporation, participated through Breann Willems.

The administrative law judge took official notice of the administrative records. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the claimant able to work and available for work effective July 19, 2020?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed part-time as a fulfillment team member. She last performed work on May 15, 2020. She requested a personal leave of absence and it was approved by the employer. Claimant made the request because of COVID-19 related concerns for her family and roommate. The leave of absence was approved from June 1, 2020 through August 29, 2020. Work was available to claimant during this period of time. Claimant did not return to work after August 29, 2020.

Employer assisted claimant with a transfer to Washington and made efforts to have claimant return to her old location in Sioux City when she moved back in October 2020. Claimant did not respond to employer’s attempts and has permanently separated from employment. The issue of claimant’s permanent separation has not yet been addressed by the Benefits Bureau.

Claimant began new full-time employment effective the week of November 22, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not able to and available for work.

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 96.1A, 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".

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.

Iowa Admin. Code r. 24.22(2) provides:

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.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

Iowa Admin. Code r. 871-24.23(16) provides:

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

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

For an unemployed individual to be eligible to receive benefits, she must be able to work, available for work, and actively seeking work as required by the unemployment insurance law. Iowa Code § 96.4(3). The burden is on the claimant to establish that she is able and available for work within the meaning of the statute. Iowa Code § 96.6(2); Iowa Admin. Code r. 871-24.22.

The administrative law judge recognizes the claimant has filed her current claim due to hardship related to the COVID-19 pandemic. Here, the employer has work available for the claimant. However, the claimant informed the employer she was unable to work due to family and her roommate being high risk if exposed to COVID-19. The employer agreed to allow the claimant time off for that reason. The claimant is considered to be on a leave of absence and is not available for work, according to Iowa law.

Thereafter, employer continued to have work available to claimant through a transfer and then back in Sioux City when claimant moved back. Claimant did not return to work after her leave of absence, even though work was available. Therefore, the claimant is not eligible for regular, state-funded unemployment insurance benefits.

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, he/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. The claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

The issue of claimant's permanent separation with Target is remanded to the Benefits Bureau for an initial investigation and decision.

DECISION:

The unemployment insurance decision dated October 27, 2020, (reference 01) is affirmed. The claimant is not able and available for work effective July 19, 2020. Regular unemployment insurance benefits funded by the state of Iowa are denied until such time the claimant is able to and available for work.

REMAND:

The issue of claimant's permanent separation with Target is remanded to the Benefits Bureau for an initial investigation and decision.

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.
- If you do not qualify for regular unemployment insurance benefits due to disqualifying separations 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.** More information about how to apply for PUA is available online at: www.iowaworkforcedevelopment.gov/pua-information



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January 19, 2021
Decision Dated and Mailed

jlb/mh