

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DARRELL L NEUMANN
Claimant

IOWA STATE UNIVERSITY
Employer

APPEAL 21A-UI-15717-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Appellant (3)

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

STATEMENT OF THE CASE:

On June 10, 2021, the claimant/appellant filed an appeal from the June 2, 2021, (reference 02) unemployment insurance decision that disallowed benefits based on claimant not meeting the availability requirements. The parties were properly notified about the hearing. A telephone hearing was held on September 7, 2021. This hearing was held together with appeal 21A-UI-15718-CS-T. Claimant participated at the hearing. Employer participated through hearing representative, Kathleen Travers. Association Director of Events Services for the Athletic Department, Megan Rodenburg, was called as a witness for the employer. Administrative notice was taken of claimant's unemployment benefit records.

ISSUE:

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on June 24, 2019. Claimant last worked as a part-time usher. Claimant set his own schedule, however, his hours were not guaranteed. Claimant last physically worked for the claimant on March 8, 2020. The employer did have some of its events cancel but it had work available beginning on June 20, 2020.

Claimant has a medical condition that makes him high risk if he were exposed to COVID. Claimant did not look for other work and chose not to return to work although the employer notified him that they had shifts available for him. Claimant did not return to working for the employer until August 24, 2021.

Claimant has not applied for Pandemic Unemployment Assistance (PUA) and may be eligible. Claimant should fill out an application online or contact the benefits bureau to determine if he qualifies. More information can be found at the following link:
<https://www.iowaworkforcedevelopment.gov/pua-information>.

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 effective March 29, 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. 871-24.22(2) provides:

Benefit 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.

(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.

Iowa Admin. Code r. 871-24.23 provides:

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

(3) If an individual places restrictions on employability as to the wages and type of work that is acceptable and when considering the length of unemployment, such individual has no reasonable expectancy of securing work, such individual will be deemed not to have met the availability requirements of Iowa Code section 96.4(3).

An individual claiming benefits has the burden of proof that he is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

Claimant testified that he refused to work because he was concerned about his health and the possibility of contracting COVID. Claimant voluntarily chose not to sign up for shifts when they were available because of his concern for his health. By this inaction he has not established that he is genuinely attached to the labor market. Accordingly, he is not eligible for unemployment insurance benefits.

DECISION:

The June 2, 2021, (reference 02) unemployment insurance decision is modified in favor of the respondent. The claimant is not able to work and available for work effective March 29, 2020. The June 2, 2021, decision denied benefits as of August 23, 2020, however, the effective date should be modified to March 29, 2020. Benefits are denied.



Carly Smith
Administrative Law Judge
Unemployment Insurance Appeals Bureau

September 14, 2021
Decision Dated and Mailed

cs/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 unemployed or continue to be 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>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.

ATTENTION: On May 11, 2021, Governor Reynolds announced that Iowa will end its participation in federal pandemic-related unemployment benefit programs effective June 12, 2021. The last payable week for PUA in Iowa will be the week ending June 12, 2021. You may be eligible for benefits incurred prior to June 12, 2021. Additional information can be found in the press release at <https://www.iowaworkforcedevelopment.gov/iowa-end-participation-federal-unemployment-benefit-programs-citing-strong-labor-market-and>.