

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RICHARD L JONES
Claimant

HY-VEE INC
Employer

APPEAL 20A-UI-06140-JC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/05/20
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Admin. Code r. 871-24.23(10) – Availability Disqualifications – Leave of Absence

STATEMENT OF THE CASE:

The claimant/appellant, Richard L. Jones, filed an appeal from the June 2, 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 July 20, 2020. The claimant participated personally. The employer, Hy-Vee Inc., participated through Barbara Buss, a hearing representative with Corporate Cost Control. Kelly Nieland, human resources, testified for the employer.

The administrative law judge took official notice of the administrative records. Claimant Exhibits 1-3 were admitted. 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 and available for work?
Is the claimant on an approved leave of absence?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant has worked for employer since 2019. Most recently, the claimant works for the employer as a part-time delivery driver.

The claimant is seventy-eight years old and has COPD (Claimant Exhibits 1-3). His doctors have advised he discontinue work during the COVID-19 pandemic. He is unable to perform his job duties remotely. The employer had part-time work available to the claimant.

The claimant also has a pending application for Pandemic Unemployment Assistance (PUA).

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 effective April 5, 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 96.1A, 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. 871-24.22(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(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.

For an individual to be eligible to receive benefits, he 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 he 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 his 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 he was unable to work due to being high risk if exposed to COVID-19. The employer agreed to allow the claimant time off for that reason. The claimant is not considered to be available for work, according to Iowa law. 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.

DECISION:

The unemployment insurance decision dated June 2, 2020, (reference 01) is affirmed. The claimant is not able and available for work effective April 5, 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.

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

If you have applied and have been approved for PUA benefits, this decision will not negatively affect your entitlement to PUA benefits.



Jennifer L. Beckman
Administrative Law Judge
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July 28, 2020

Decision Dated and Mailed

jlb/sam