

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

WILLIAM F OERTEL
Claimant

MASON CITY FAMILY YMCA YOUNG MEN
Employer

APPEAL 21A-UI-21044-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 06/27/21
Claimant: Appellant (1R)**

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

STATEMENT OF THE CASE:

On September 24, 2021, the claimant/appellant filed an appeal from the September 21, 2021, (reference 01) unemployment insurance decision that disallowed benefits based on claimant not willing to work the number of hours required in his occupation. The parties were properly notified about the hearing. A telephone hearing was held on November 23, 2021. Claimant participated at the hearing. Employer did not register a number to participate in the hearing prior to the hearing and therefore did not participate in the hearing. Administrative notice was taken of claimant's unemployment insurance records.

ISSUES:

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 in 2008. Claimant is still employed with the employer. In May 2021, the claimant informed the employer that he would be taking on more hours with his other part-time employer, North Iowa Bus Company, Inc. and that he was giving up his hours for the summer so the high school and college age people could have the hours. Claimant wanted to work more for the North Iowa Bus Company, Inc. because they could offer him more hours and a higher wage. The parties agreed claimant would resume his normal part-time hours when school began. Claimant resumed his normal part-time hours with the employer on August 24, 2021.

Claimant earned wages with his other part-time employer, North Bus Company, Inc.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code § 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 § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 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.

(emphasis added).

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.

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 claimant was a part-time employee of the employer. Claimant requested that he not work over the summer because he wanted to work more hours with North Iowa Bus Company, Inc. The parties agreed that claimant would return back to work with the employer when the school year started. The claimant returned to work with the employer on August 24, 2021. Since claimant requested and was

granted a leave of absence, such period is deemed to be a period of voluntary unemployment and he is ineligible for benefits for such period.

DECISION:

The September 21, 2021 (reference 01) decision is affirmed. Claimant was on a leave of absence from this employer and is not eligible for benefits for such period. Benefits are denied.

REMAND:

The issue of whether claimant is eligible for benefits from employer North Iowa Bus Company, Inc. is remanded to the benefits bureau for an initial investigation and determination.



Carly Smith
Administrative Law Judge
Unemployment Insurance Appeals Bureau

December 30, 2021
Decision Dated and Mailed

cs/kmj

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 were 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 is 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>.