

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ARLENE S LAAKER**  
Claimant

**MARTIN LUTHER HOME CORPORATION**  
Employer

**APPEAL 20A-UI-06286-JC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/12/20**  
**Claimant: Appellant (1R)**

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Iowa Code § 96.4(3) – Able to and Available for Work  
Iowa Admin. Code r. 871-24.23(10) – Leave of Absence  
Iowa Admin. Code r. 871-24.23(16) – Availability Restrictions

**STATEMENT OF THE CASE:**

The claimant/appellant, Arlene S. Laaker, filed an appeal from the June 4, 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 first scheduled for July 15, 2020. At the time of the hearing, the claimant appeared personally and the employer appeared through Equifax hearing representative, Amelia Gallagher. Ms. Laaker requested a postponement on behalf of her attorney, Emilie Roth Richardson, and the request was granted.

After proper notice, a telephone hearing was conducted on August 20, 2020. The claimant participated personally and was represented by Emilie Roth Richardson, attorney at law. The employer, Martin Luther Homes Corporation, was represented by Stephan E. Alt, attorney at law. Janet Warren, executive director and administrator, testified on behalf of the employer.

The administrative law judge took official notice of the administrative records. Employer Exhibits 1-5, and Claimant Exhibit A were admitted into evidence. 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 March 29, 2020?  
Is the claimant voluntarily unemployed due to a requested 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 2014. Most recently, the claimant worked for the employer as a full-time receptionist. The claimant’s last day of work was March 19, 2020.

The claimant was the point of contact for incoming visitors, vendors and would interact with staff/residents. As part of COVID-19 procedures, the employer implemented a temperature taking station of individuals entering the building. The claimant was one of the people responsible for taking temperatures. On March 10, 2020, the employer closed its doors to the public and limited incoming people to the building.

The claimant notified the employer on March 20, 2020 that her age, existing health conditions and the health conditions of her husband made her high risk if she was exposed to COVID-19 (Claimant Exhibit A). The claimant's concerns were not based upon medical advice by her doctor, but she removed herself from work without a medical directive because she was uncomfortable performing her work duties. The claimant told Ms. Warren that she wanted to be at least six feet from all people at all times (Warren testimony). The claimant was unable to perform her job duties remotely.

The employer did not place the claimant on a formal leave of absence, nor did the claimant explicitly request a leave of absence. Rather, the claimant stated she would not work unless certain conditions were met and when the employer did not meet them, she did not return to work.

The claimant took approximately 200 hours of PTO and then remained off work, unpaid, until June 1, 2020, when permanent separation occurred. The employer had full-time work available to the claimant from March 29, 2020 through May 31, 2020. The issue of the claimant's permanent separation has not yet been addressed by the Benefits Bureau.

#### **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 March 29, 2020 through May 31, 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. 871-24.23(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.

(emphasis added).

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.

(emphasis added).

For an individual to be eligible to receive benefits, she must be able to work and available for 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.

When employees request and are granted a leave of absence, they are considered to be voluntarily unemployed. The claimant never requested a leave of absence, and the employer stated claimant did not meet the formal requirements of being on a leave of absence. Therefore, the claimant was not voluntarily unemployed due to a leave of absence. Even if the claimant's absence from work is not considered a disqualifying leave of absence, she does not meet the requirements of being able to and available for work.

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.

The administrative law judge recognizes the claimant 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 is uncomfortable working due to being high risk if exposed to COVID-19. Inasmuch as the claimant removed herself from work without a medical directive and placed restrictions on the work she was willing to do, she has restricted her availability to perform work. Based on the evidence presented, the administrative law judge concludes the claimant is not able to and available for work March 29, 2020 through May 31, 2020. Therefore, the claimant is not eligible for regular, state-funded unemployment insurance benefits. The issues of the claimant's permanent separation effective June 1, 2020 and whether the claimant is able to and available for work effective June 1, 2020 are remanded to the Benefits Bureau for an initial investigation and initial decision.

*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 parties are reminded that under Iowa Code § 96.6-4, a finding of fact or law, judgment, conclusion, or final order made in an unemployment insurance proceeding is binding only on the parties in this proceeding and is not binding in any other agency or judicial proceeding. This provision makes clear that unemployment findings and conclusions are only binding on unemployment issues, and have no effect otherwise.

**DECISION:**

The unemployment insurance decision dated June 4, 2020, (reference 01) is affirmed. The claimant is not able and available for work effective March 29, 2020 through May 31, 2020. Regular unemployment insurance benefits funded by the state of Iowa are denied until such time as the claimant is able to and available for work.

**REMAND:** The issues of the claimant's permanent separation effective June 1, 2020 and whether the claimant is able to and available for work effective June 1, 2020 are remanded to the Benefits Bureau for an initial investigation and initial decision.



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Jennifer L. Beckman  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
Iowa Workforce Development  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax 515-478-3528

August 25, 2020  
Decision Dated and Mailed

jlb/sam

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

**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](http://www.iowaworkforcedevelopment.gov/pua-information)