

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**TAMARA K TOMKINS**

Claimant

**APPEAL 20A-UI-10502-AD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MARQUETTE HOTEL GROUP LLC**

Employer

**OC: 04/12/20**

**Claimant: Appellant (5)**

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Iowa Code section 96.4(3) – Eligibility – Able to and Available for Work

Iowa Admin. Code r. 871-24.23(10) – Voluntary Leave of Absence

**STATEMENT OF THE CASE:**

On August 27, 2020, Tamara Tomkins (claimant/appellant) filed an appeal from the August 18, 2020 (reference 01) unemployment insurance decision that denied benefits based on a finding claimant requested and was granted a leave of absence.

A telephone hearing was held on October 15, 2020. The parties were properly notified of the hearing. The claimant participated personally. Marquette Hotel Group LLC (employer/respondent) participated by General Manager Ada Waterman.

Official notice was taken of the administrative record.

**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:

Claimant's first day of employment was March 5, 2019. Claimant is still employed by employer as a full-time night audit. Employer was offering unpaid furloughs to employees, which claimant chose to accept. Claimant accepted the furlough due to her concern about the pandemic. There was work available for claimant if she had not chosen to take the furlough. This period began April 12, 2020 and continued until May 27, 2020. Claimant returned at that time and has been employed in her usual position since.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the August 18, 2020 (reference 01) unemployment insurance decision that denied benefits based on a finding claimant requested and was granted a leave of absence is MODIFIED with no change in effect. Claimant is ineligible for benefits from the benefit week ending April 18, 2020, and continuing through the benefit week ending May 23, 2020, due to being unavailable for work during that time. She is not eligible for benefits from the benefit week ending May 30, 2020 to present, as she returned to her normal, full-time employment after the furlough and thus working to such an extent that she is not available.

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(2) 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.

(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.

Claimant did not request a leave of absence. However, she did accept employer's offer of a furlough. There was work available for claimant if she had not accepted the furlough. The administrative law judge appreciates claimant's reason for taking the furlough. However, in doing so claimant made herself unavailable for work during this time. Claimant is therefore not eligible for benefits during this period. Claimant is not eligible for benefits from the date she returned to work, as she was working to such an extent that she was not available.

**While this decision denies regular, state benefits, the evidence indicates claimant may be eligible for federal Pandemic Unemployment Assistance (PUA). Further information on PUA, including how to apply, is set forth below.**

**DECISION:**

The August 18, 2020 (reference 01) unemployment insurance decision that denied benefits based on a finding claimant requested and was granted a leave of absence is MODIFIED with no change in effect. Claimant is ineligible for benefits from the benefit week ending April 18, 2020, and continuing through the benefit week ending May 23, 2020, due to being unavailable for work during that time. She is not eligible for benefits from the benefit week ending May 30, 2020 to present, as she returned to her normal, full-time employment after the furlough and thus working to such an extent that she is not available.



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Andrew B. Duffelmeyer  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515) 478-3528

October 16, 2020  
Decision Dated and Mailed

abd/scn

***Note to Claimant:***

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are 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.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.