

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

THOMAS H CARPENTER
Claimant

HY-VEE INC
Employer

APPEAL NO. 21A-UI-01619-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/06/20
Claimant: Appellant (2)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.19(38) – Temporary and Partial Unemployment

STATEMENT OF THE CASE:

The claimant, Thomas Carpenter, filed a timely appeal from the December 7, 2020, reference 01, decision that denied benefits effective September 6, 2020, based on the deputy's conclusion that the claimant requested and was granted a leave of absence, was voluntarily unemployed, and unavailable for work. After due notice was issued, a hearing was held on February 22, 2021. Claimant participated. Barbara Buss of Corporate Cost Control represented the employer and presented testimony through Natalie McGee. The administrative law judge took official notice of the following Agency administrative records: KCCO and DBRO.

ISSUES:

Whether the claimant was able to work and available for work during the two-week period of September 6, 2020 through September 18, 2020.

Whether the claimant was partially and/or temporarily unemployed during the two-week period of September 6, 2020 through September 18, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant has been employed by Hy-Vee as a full-time truck driver for 26 years. On Monday, September 7, 2020, the claimant's mother passed away due to COVID-19. The family, including the claimant, gathered with the claimant's mother at the hospital during her final moments. Monday, September 7, 2020 was the Labor Day holiday. The claimant was ready, willing and able to report for work on Tuesday, September 8, 2020. However, the employer notified the claimant that due to the circumstances of his mother's passing, and due to Hy-Vee policy, the claimant would need to quarantine off work for two weeks before he would be allowed to return to the employment. The claimant continued to be ready, willing and able to report for work, but remained off work until the employer allowed him to return on September 20, 2020. The employer did not compensate the claimant for this period of involuntary time off.

The claimant established an original claim that was effective September 6, 2020. The claimant made weekly claims for the weeks that ended September 12 and September 19, 2020, but then discontinued his claim.

REASONING AND CONCLUSIONS OF LAW:

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.

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.

Iowa Code section 96.19(38) provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

If a claimant individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. Iowa Code section 96.7(2)(a)(2)(a).

The evidence in the record establishes that the claimant was able to work and available for work, but temporarily laid off during the benefit weeks that ended September 12 and September 19, 2020. The claimant is eligible for benefits for those weeks, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant for those two weeks.

DECISION:

The December 7, 2020, reference 01, is reversed. The claimant was able to work and available for work, but temporarily laid off during the benefit weeks that ended September 12 and September 19, 2020. The claimant is eligible for benefits for those weeks, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant for those two weeks.



James E. Timberland
Administrative Law Judge

March 8, 2021
Decision Dated and Mailed

jet/lj