

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**ALLEN I SALAS/
ROBERT ALLEN JOLLEY II**
Claimant

CONVENIENT SUBS INC
Employer

**APPEAL 21A-UI-17776-JC-T
ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/22/20
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

All documents with the exception of claimant's appeal letter, refer to the claimant as "Allen I. Salas." At the time of hearing, claimant informed the administrative law judge that in 2019 he had a legal name change to "Robert Allen Jolley II". For purposes of this decision, the two names will be used together to identify the claimant inasmuch as there is no record for unemployment insurance benefits for Robert Allen Jolley II.

The claimant/appellant, Allen I. Salas/Robert , filed an appeal from the August 5, 2021 (reference 02) Iowa Workforce Development ("IWD") unemployment insurance decision that denied benefits and stated she was ineligible for benefits due to a requested leave of absence. The parties were properly notified about the hearing. A telephone hearing was held on October 5, 2021. The claimant participated personally. The employer participated through Elizabeth Goode, store manager. The administrative law judge took official notice of the administrative records. 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:

Was the claimant able to work and available for work effective April 16, 2020?
Was 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 employer operates a Subway restaurant. Claimant began employment on August 3, 2019 and worked as a full-time (30-35 hours per week) Sandwich Artist until April 15, 2020. Claimant permanently separated from employment. The issue of claimant's permanent separation with this employer has not yet been addressed by the Benefits Bureau.

Claimant last performed work on April 15, 2020, and informed employer that due to the COVID-19 pandemic, and having high-risk family members in his household, that he was not

comfortable working for employer. At the time, employer had implemented hourly cleaning/sanitizing, required masks and gloves of all employees, and kept employees spaced out as far as possible. Employer had work available for claimant had he felt comfortable working.

The administrative records do not reflect claimant made an application for Pandemic Unemployment Assistance (PUA) benefits after being denied regular unemployment insurance benefits. Individuals who do not qualify for regular unemployment insurance benefits, but were unemployed for reasons related to COVID-19 had the option to for Pandemic Unemployment Assistance (PUA). See <https://www.iowaworkforcedevelopment.gov/pua-information>

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not able to and available for work effective April 16, 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.

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.

For an individual to be eligible to receive benefits, he 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 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 unemployment insurance 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 having family members who were high risk if exposed to COVID-19. The employer agreed to allow the claimant time off for that reason. The claimant is considered to be on a leave of absence and is not available for work, according to Iowa law. Therefore, the claimant is not eligible for regular, state-funded unemployment insurance benefits.

The issues of claimant's permanent separation, whether he was able and available for work after his permanent separation, and whether claimant may be overpaid any benefits are remanded to the Benefits Bureau for an investigation.

DECISION:

The unemployment insurance decision dated August 5, 2021, (reference 02) is affirmed. The claimant was not able and available for work effective April 16, 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.



Jennifer L. Beckman
Administrative Law Judge
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October 7, 2021
Decision Dated and Mailed

jlb/mh