

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JEREMY W MARVELL
Claimant

THE UNIVERSITY OF IOWA
Employer

APPEAL 20A-UI-09728-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/22/20
Claimant: Appellant (2)

Iowa Code § 96.4-3 – Able and Available
871 IAC 24.23(10) – Voluntary Leave of Absence

STATEMENT OF THE CASE:

Jeremy Marvell (claimant) appealed a representative's August 5, 2020, decision (reference 02) that concluded ineligibility to receive unemployment insurance benefits as of May 3, 2020, because a leave of absence was granted by The University of Iowa (employer) at the claimant's request. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 29, 2020. The claimant participated personally. The employer participated by Jessica Wade, Human Resources Business Analyst. The administrative law judge took official notice of the administrative file.

ISSUE:

The issue is whether the claimant is available for work and whether the claimant was on an approved leave of absence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on November 25, 2019, as a full-time cook one in the Hillcrest building. On March 22, 2020, Hillcrest shut down and the claimant had no work. The claimant was unaware that the employer had any work elsewhere. The employer continued to pay him wages through the end of April 2020.

The claimant and employer talked about the claimant's medical condition and whether he wanted to apply for Family Medical Leave (FMLA). The claimant did not. The employer placed employees on unpaid leave from April 27, 2020, through June 11, 2020. It placed employees on unpaid furlough through July 17, 2020. The claimant returned to work on July 19, 2020.

REASONING AND CONCLUSIONS OF LAW:

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.

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 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

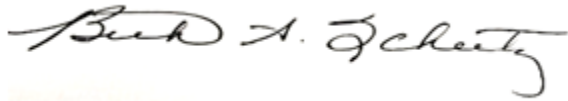
3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (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".

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). When employees request and are granted a leave of absence, they are considered to be voluntarily unemployed. The claimant did not request a leave. The employer did not have work available for a period of time in excess of four consecutive weeks. The claimant was totally unemployed.

During that time there has been no evidence offered that the claimant is not able and available for work. Benefits are allowed as of May 3, 2020, provided the claimant is otherwise eligible.

DECISION:

The representative's August 5, 2020, decision (reference 02) is reversed. The claimant is available for work. Benefits are allowed as of May 3, 2020, provided the claimant is otherwise eligible.

A handwritten signature in black ink, reading "Beth A. Scheetz". The signature is written in a cursive, flowing style.

Beth A. Scheetz
Administrative Law Judge

September 30, 2020
Decision Dated and Mailed

bas/mh