

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**RAEGAN E LESTER**  
Claimant

**HY-VEE INC**  
Employer

**APPEAL NO. 20A-UI-08582-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/26/20**  
**Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.23(10) – Able & Available – Availability Disqualifications

**STATEMENT OF THE CASE:**

The parents/legal guardians of Raegan Lester filed a timely appeal from the July 13, 2020, reference 01, decision that denied benefits effective April 26, 2020, based on the deputy's conclusion that Ms. Lester requested and was granted a leave of absence, was voluntarily unemployed, and was unavailable for work. After due notice was issued, a hearing was held on September 1, 2020. Raegan Lester participated personally and was represented by Margaret "Peggy" Lester. Raegan Lester and Peggy Lester both testified. Frankie Patterson of Corporate Cost Control represented the employer and presented testimony through Kim Steven and Jenette Payton. Exhibits A and B were received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX and WAGE-A.

**ISSUES:**

Whether the claimant was able to work and available for work during the period that began April 26, 2020.

Whether the claimant was on a leave of absence that she requested and the employer approved for the period beginning April 26, 2020.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Raegan Lester is employed by Hy-Vee, Inc. as a part-time bakery cleaner/clerk. Ms. Lester began her employment in 2018. Before the COVID-19 virus became a factor in the employment, Ms. Lester worked 10 to 15 hours a week. Ms. Lester's wage is \$9.50 an hour. Ms. Lester's shift would begin at 2:00 p.m. or 4:00 p.m. and end at 8:00 p.m. Ms. Lester's duties include washing dishes, cleaning the floor, performing other cleaning duties, waiting on customers, and packaging bakery products. Ms. Lester has Down syndrome. Ms. Lester also has coronary heart disease, asthma, and hyperthyroidism. Ms. Lester's mother, Peggy Lester, is also employed at Hy-Vee in the bakery department.

At the time of the appeal hearing, Reagan Lester had last performed work for Hy-Vee on or about March 17, 2020. Peggy Lester then contacted bakery supervisor Jenette Payton and advised that she and Reagan Lester needed to go off work because of Reagan Lester's health issues and because she was afraid Reagan Lester might contract COVID-19. Peggy Lester indicated that she herself also needed to go off work because she did not want to take the virus home to Reagan Lester. Peggy Lester told Ms. Payton that she had been in contact with Reagan Lester's doctor and that the doctor had advised Reagan Lester should not be working. The employer did not request and the Lester family did not provide medical documentation in support of the leave of absence. Nonetheless, the employer approved the requests for leaves of absence with an indefinite return-to-work date. Peggy Lester advised that she and Reagan Lester would not be returning until COVID-19 "let up" or something else was done to make the workplace safer. The employer was at that point keeping a list of employees who were off work due to their concern about COVID-19.

At the time Reagan Lester and Peggy Lester went off work, the employer had not yet mandated that staff or customers wear masks. On April 27, 2020, the employer began requiring employees to wear masks in the workplace. Hy-Vee suggested customers do the same, but did not require customers to wear masks.

Reagan Lester and Peggy Lester were still off work pursuant to the approved leave of absence on May 14, 2020, when Peggy Lester contacted Ms. Payton. Peggy Lester asked Ms. Payton whether she and Reagan Lester could return to work with altered work hours wherein they started their shift after the store closed. Peggy Lester asked whether the employer was still requiring employees to wear masks and how long that might last. Peggy Lester raised a concern that Reagan Lester might not be able to wear a mask while working due to becoming lightheaded and sick to her stomach when she did wear a mask.

The employer subsequently began encouraging customers and staff to socially distance by remaining 6 feet apart. The employer also encouraged social distancing by making the shopping aisles one-way. The bakery discontinued single donut/self-serve cases and began packaging all bakery items.

On May 19, 2020, Peggy Lester notified Ms. Payton that she and her husband had decided it would be best if she and Reagan Lester did not return to work until the following year. Ms. Payton indicated that Peggy Lester and Reagan Lester would both be welcomed back when they were ready to return. The Lester family and Ms. Payton are neighbors and have continued to see each other from time to time.

The Lesters have provided a medical note from a physician's assistant. The note is dated August 26, 2020. The note indicates as follows:

It is my medical opinion that due to Reagan E Lester's medical history, I advise against her working in any environment where COVID19 exposure is possible. Since Hy-Vee does not mandate mask wearing, exposure to COVID19 is a genuine concern.

My recommendation for Reagan E. Lester is that she remain off work until there is a FDA approved vaccine.

As of the September 1, 2020 appeal hearing, the employer and the Lester family continued under a mutual understanding that Reagan Lester was still on an approved leave of absence.

The Lester family established an original claim for unemployment insurance benefits on behalf of Raegan Lester that was effective April 26, 2020. Hy-Vee is the sole base period employer. Iowa Workforce Development set Raegan Lester's weekly benefit amount for regular benefits at \$85.00. By the time of the September 1, 2020 appeal hearing, the Lester family had made weekly claims on Raegan Lester's behalf for the consecutive weeks between April 26, 2020 and August 29, 2020. Iowa Workforce Development disbursed \$85.00 in weekly regular benefits for each of the eight consecutive weeks between April 26, 2020 and June 20, 2020. For those same weeks, Iowa Workforce Development disbursed \$600.00 in weekly Federal Pandemic Unemployment Compensation (FPUC) benefits.

## **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.

Since the Lester family established the original claim for benefits on behalf of Raegan Lester, Raegan Lester has been on an approved leave of absence that her parents/legal guardians requested on her behalf and that the employer approved. Raegan Lester continues under the care of a medical professional, who has advised she should remain off work due to being high risk for COVID 19. Raegan Lester has not established that she is able to work and available for work, even under the United States Department of Labor's guidance to flexibly interpret this requirement. See Unemployment Insurance Program Letter No. 10-20. Therefore, Raegan Lester is not eligible for regular, state-funded unemployment insurance benefits from the effective date of the claim.

Even though Raegan Lester is not eligible for regular unemployment insurance benefits under state law, 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.

**DECISION:**

The July 13, 2020, reference 01, is affirmed. The claimant has not been able to work and available for work since establishing her claim for benefits. Accordingly, the claimant is not eligible for regular, state-funded unemployment insurance benefits for the period beginning April 26, 2020. The able and available disqualification continued at the time of the September 1, 2020 appeal hearing.



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James E. Timberland  
Administrative Law Judge

October 14, 2020  
Decision Dated and Mailed

jet/sam

**NOTE TO CLAIMANT:**

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. 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 under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA, you may be required to repay the benefits you have received.**