

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALAN-MICHEAL C CILEK
Claimant

DALL-HAUS INC
Employer

APPEAL 20A-UI-10912-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/12/20
Claimant: Respondent (4-R)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions
Iowa Code § 96.5(3)a – Failure to Accept Work

STATEMENT OF THE CASE:

On September 8, 2020, Dall-Haus, Inc. (employer) filed a timely appeal from the September 3, 2020, reference 05, unemployment insurance decision that allowed benefits based on the determination no offer of work was made on May 13, 2020. After due notice was issued, a telephone conference hearing was held on October 23, 2020. The claimant did not respond to the hearing notice and did not participate. The employer participated through Wendy Patterson, General Manager. No exhibits were offered into the record.

ISSUE:

Is the claimant able to and available for work effective April 12, 2020?

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: The claimant began working for the employer on February 18, 2020, as a part-time Crew Member scheduled to work 25 to 30 hours a week. The claimant filed his claim for unemployment insurance benefits effective April 12. The claimant did not work that week because his daughter's mother was being tested for COVID-19 and he was in self-quarantine. The claimant was in self-quarantine for three weeks and returned to work on May 3. He was scheduled to work 30 hours that week; however, he became ill and only worked 18 hours.

The claimant's last day worked was Tuesday, May 12, but he only worked five and a half hours that day. The claimant left work because he had chest pains and was short of breath. On May 13, the employer began trying to reach the claimant, but he did not respond to their multiple phone calls. On June 4, the employer stopped trying to contact the claimant and determined he had separated from employment.

Whether the claimant's separation qualifies him for unemployment insurance benefits has not been investigated or adjudicated by the Benefits Bureau.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not able to and available for work from April 12 through May 16, 2020. Benefits are denied.

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 provides, in relevant part:

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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

...

(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.

...

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

Iowa Admin. Code r. 871-24.23 provides, in relevant part:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

...

(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.

...

(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.

(17) Work is unduly limited because the claimant is not willing to work the number of hours required to work in the claimant's occupation.

...

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

An individual claiming benefits has the burden to prove that he is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. The claimant was on an approved leave of absence for first three weeks beginning April 12. He was then ill and unable to work the major portions of the scheduled workweeks ending May 16. As a result, he has not established that he was genuinely attached to the labor market. Benefits for that period are denied.

The issues of whether the claimant's separation qualifies him for benefits and if he is able to and available for work effective May 17, 2020, are remanded to the Benefits Bureau for a fact-finding interview and decisions to include both parties.

DECISION:

Regular Unemployment Insurance Benefits Under State Law

The September 3, 2020, reference 05, unemployment insurance decision is modified in favor of the appellant. The claimant was not able to and available for work from April 12 through May 16, 2020. Regular unemployment insurance benefits are denied.

Pandemic Unemployment Assistance (PUA) Under the Federal CARES Act

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, he may be eligible for federally funded unemployment insurance benefits under the CARES Act. 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 in FPUC. This decision does not address whether the claimant is eligible for PUA. For a decision on such eligibility, the claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

REMAND:

The issues of whether the claimant's separation qualifies him for benefits and if he is able to and available for work effective May 17, 2020, are remanded to the Benefits Bureau for a fact-finding interview and decisions to include both parties.



Stephanie R. Callahan
Administrative Law Judge

October 29, 2020
Decision Dated and Mailed

src/sam

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. 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. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently 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 under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.