

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TIMOTHY M BENNETT
Claimant

HY-VEE INC
Employer

APPEAL 20A-UI-15308-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/12/20
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

On November 7, 2020, the claimant filed an appeal from the October 29, 2020 (reference 01) unemployment insurance decision that denied benefits to the claimant based on a leave of absence. The parties were properly notified about the hearing. A telephone hearing was held on January 21, 2021. Claimant participated personally. Lorri Bennett, Kevontae Lottie-Harris and Jessica Ramirez testified on behalf of the claimant. The employer, Hy-Vee Inc., was represented by Frankie Patterson. The administrative law judge took official notice of the claimant's unemployment insurance benefits records. The hearing was consolidated with Appeal No. 20A-DUA-00977-DB-T.

ISSUES:

Is the claimant able to and available for work?
Is the claimant on an approved leave of absence?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant has worked for employer since August of 2019. He worked part-time as a cashier and customer service. Claimant's last day physically worked on the job was July 12, 2020. In July of 2020, the claimant was providing child care services to his sister's four minor children. The claimant cared for them on a daily basis during the daytime and some evening hours. He is responsible for assisting them with online schooling and providing meals, supervision and other caregiving responsibilities. He continues to care for the children because his brother-in-law is having medical issues necessitating numerous doctor visits and hospital stays.

On or about July 12, 2020, the claimant spoke to his manager about the fact that he was going to be caring for his nieces and nephews. He also spoke to him about the fact that he did not believe the store was properly responding to the COVID 19 public health emergency because he was not required to quarantine in March of 2020 when he came in close contact with a co-worker who tested positive for COVID 19. The parties agreed at that time that the claimant would be taken off the schedule so that he could care for his sister's minor children. Claimant

never contacted the employer to be put back on the schedule and continues to care for his nieces and nephews daily.

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", 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:

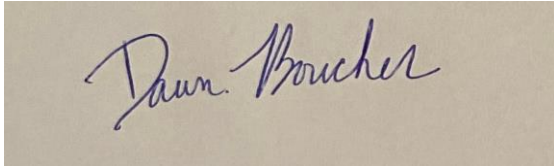
Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(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.

In this case, the claimant agreed to a voluntary leave of absence. As such, the period of time he is not working is deemed to be a period of voluntary unemployment. Further, the claimant is not available to work during the hours when work is available to him because he is watching his nieces and nephews on a full-time basis. Claimant has not established that he is able to and available for work. Therefore, claimant is not eligible for regular, state-funded unemployment insurance benefits and benefits are denied effective July 12, 2020.

DECISION:

The October 29, 2020 (reference 01) unemployment insurance decision is affirmed. The claimant is on a voluntary leave of absence and is not able to work and available for work effective July 12, 2020. Unemployment insurance benefits funded by the State of Iowa are denied until such time claimant is able to and available for work.



Dawn Boucher
Administrative Law Judge

February 8, 2021
Decision Dated and Mailed

db/mh