

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JUSTIN ARNOLD**

Claimant

**APPEAL 20A-UI-06477-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GOVERNMENT EMPLOYEES INSURANCE**

Employer

**OC: 04/12/20**

**Claimant: Appellant (4R)**

Iowa Code § 96.4(3) – Able to and Available for Work

Iowa Admin. Code r. 871-24.23(10) – Availability Disqualifications – Leave of Absence

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the June 16, 2020 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 23, 2020. The claimant participated personally. The employer participated through Jessica Bell, human resources manager. Kelly Langdon registered for the hearing as the employer representative, but was unavailable when called twice during the hearing.

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:**

Is the claimant able to and available for work?

Is the claimant on a leave of absence?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant has worked for employer since November 2017. Most recently, the claimant works for the employer as a full-time sales agent.

The employer closed its office due to COVID-19 on March 13, 2020. The claimant attempted to work from home until April 13, 2020. Due to technical connectivity issues, he could not perform his work duties, and the employer had no alternative location for the claimant to work. Claimant stated he tried working with the employer to resolve the technology issues. From April 14, 2020 until June 14, 2020, the claimant did not perform work. Claimant did not request a leave of absence.

The employer gave employees the option to return to the office effective June 15, 2020. Claimant then requested and was approved for FMLA effective June 15, 2020. The employer had full-time work available to the claimant.

The employer asserted it is not contesting benefits to the claimant.

### **REASONING AND CONCLUSIONS OF LAW:**

The first issue before the administrative law judge is whether the employer's agreement not to contest a claim for unemployment insurance benefits ensures that the claimant will receive unemployment benefits. It does not. The decision about whether a claimant receives or is denied unemployment insurance benefits is not up to the employer or the claimant, but is determined by Iowa Workforce Development applying the facts of the claimant's job separation to the Unemployment Security Law as enacted by the state legislature. Whereupon the employer might agree not to contest a claim, that promise, in and of itself, does not guarantee that a claimant will receive unemployment insurance benefits, but only that the employer will not hinder any efforts on the part of the claimant to make a claim for unemployment benefits.

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.

(emphasis added).

Iowa Admin. Code r. 871-24.22(1)a 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.

(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.

(emphasis added).

To be able to work, "[a]n 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." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871-24.22(1). "An evaluation of an individual's ability to work for the purposes of determining that individual's eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides." *Sierra* at 723.

Iowa Admin. Code r. 24.22(2) provides:

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.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

(emphasis added).

**For the period of April 14-June 14, 2020:** The credible evidence presented is the employer closed its office during this period of time and the claimant was physically able to perform work, but did not have the technology to perform his job duties. No evidence was presented that the claimant was required to have technology enabled at home to complete job duties, as a

condition of employment. The undisputed evidence is that he did not request to be on a leave of absence during this period, and was otherwise able to work, had he been able to go to the office.

The issue of whether the employer will be charged for benefits paid due to the COVID 19 pandemic will be remanded to the Tax Bureau of Iowa Workforce Development for an initial determination on the allocation of charges.

**Effective June 15, 2020:** Here, the employer has work available for the claimant. 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.

*Even though the claimant is not eligible for regular unemployment insurance benefits effective June 15, 2020, under state law, he/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. The claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.*

**DECISION:**

The unemployment insurance decision dated June 16, 2020, (reference 01) is modified in favor of the appellant.

The claimant did not request a leave of absence and was able to and available for full-time work effective April 14-June 13, 2020. Benefits are allowed, provided the claimant is otherwise eligible.

The claimant is not able and available for work effective June 15, 2020 due to being on a requested leave of absence. Regular unemployment insurance benefits funded by the state of Iowa are denied until such time the claimant is able to and available for work.

**REMAND:** The issue of whether the employer will be charged for benefits paid due to the COVID 19 pandemic will be remanded to the Tax Bureau of Iowa Workforce Development for an initial determination on the allocation of charges.

**NOTE TO CLAIMANT:**

- This decision determines you are not eligible for regular unemployment insurance benefits effective June 15, 2020. 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 due to disqualifying separations 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.** More information about how to apply for PUA is available online at:  
[www.iowaworkforcedevelopment.gov/pua-information](http://www.iowaworkforcedevelopment.gov/pua-information)

If you have applied and have been approved for PUA benefits, this decision will not negatively affect your entitlement to PUA benefits.



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July 31, 2020  
Decision Dated and Mailed

jlb/scn