

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**DUANE N SORENSEN**  
Claimant

**WESTAR FOODS INC**  
Employer

**APPEAL 20A-UI-04860-AW-T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 04/05/20**  
**Claimant: Appellant (1)**

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Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search  
Iowa Admin. Code r. 871-24.22(2)j – Benefit Eligibility Conditions – Leave of Absence  
Iowa Admin. Code r. 871-24.23(10) – Availability Disqualifications – Leave of Absence

**STATEMENT OF THE CASE:**

Claimant filed an appeal from the May 22, 2020 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on June 22, 2020, at 1:00 p.m. Claimant participated. Employer participated through Jeff Oswald, Hearing Representative, and Tina Chudarry, General Manager. Claimant's Exhibit A was admitted.

**ISSUES:**

Whether claimant is able to and available for work.  
Whether claimant is 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 been employed as a part-time cook with Westar Foods, Inc. (d/b/a Hardee's) for approximately 12 years. On April 7, 2020, claimant requested a leave of absence from work due to his concerns about Covid-19 and his underlying medical conditions. Employer granted claimant's request. Claimant was on leave of absence from April 7, 2020 until May 12, 2020. Employer had work available for claimant if he had not requested to be removed from the work schedule. At the time claimant requested his leave of absence, employer had closed the dining room and increased the frequency and extent of cleaning and sanitizing. Claimant was also allowed to wear his own face mask to work. Even with these measures in place, claimant did not feel comfortable working and risking exposure to Covid-19.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was on an approved leave of absence and, thus, was not available for work. 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(2)j provides:

Benefit 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.

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.

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.

Claimant requested and was granted a voluntary leave of absence due to his concerns regarding Covid-19. Employer had work available for claimant. Claimant was on a voluntary leave of absence, making him not available for work. Accordingly, claimant is not eligible for benefits.

**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 due to disqualifying separations, 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.

**DECISION:**

The May 22, 2020 (reference 01) unemployment insurance decision is affirmed. Claimant was on an approved leave of absence and, therefore, was not available for work effective April 5, 2020. Benefits are denied.



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Adrienne C. Williamson  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
Iowa Workforce Development  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515)478-3528

July 1, 2020  
Decision Dated and Mailed

acw/sam