

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JOHN R PALMER
Claimant

HY-VEE INC
Employer

APPEAL NO. 21A-UI-04572-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Appellant (1)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

The claimant, John Palmer, filed a timely appeal from the January 29, 2021, reference 01, decision that denied benefits for the period beginning November 2, 2020, based on the deputy's conclusion that the claimant requested and was granted a leave of absence, was voluntarily unemployed, and was not available for work. After due notice was issued, a hearing was held on April 9, 2021. The claimant participated and presented additional testimony through Alyson Palmer. Barbara Buss of Corporate Cost Control represented the employer and presented testimony through Natalie McGee, Assistant Vice President Human Resources. The hearing in this matter was consolidated with the hearing in Appeal Number 21A-UI-04573-JTT. Exhibits A, B and C were received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX and WAGE-A.

ISSUE:

Whether the claimant was able to work and available for work for the period beginning November 22, 2020 through the benefit week that ended February 6, 2021.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant is employed by Hy-Vee, Inc. as a full-time order selector at the employer's warehouse in Chariton. The claimant's usual work hours are 7:00 a.m. to 3:00 p.m. Tuesday through Saturday. The claimant's wage, as of March 2020, was \$27.34 an hour. The wage increased to \$28.23 an hour on March 18, 2021. The claimant's usual duties involve driving a pallet jack to different areas of the warehouse to select product, building the pallet of product, wrapping the pallet of product, and placing the pallet of product in a staging area where it can be loaded and shipped. The work at times brings the claimant in close proximity to coworkers who are doing similar order selecting work or while the claimant assists with unloading product off trucks.

The claimant suffers from coronary artery disease that includes a 70 percent blockage in his coronary artery. The claimant lives with an ongoing concern about experiencing a clotted artery. In response to concerns about the risk associated with COVID-19, the claimant elected to commence an unpaid leave of absence effective April 4, 2020. On April 3, 2020, the claimant

obtained a note from his cardiologist. The notes states: "To whom it may concern: John has coronary artery disease. As per CDC information, this places him at higher risk of complications if he contracts the COVID-19 virus." The note did not state the doctor had advised the claimant to quarantine at home and the doctor had not given such advice.

Before the claimant went off work in April 2020, the employer commenced providing employees with masks and instructed employees to wear the masks whenever working within six feet of another employee. The employer also encouraged employees to stay home if they were ill. In addition, the employer commenced taking employees' temperature to screen for potential COVID-19 symptoms. The claimant was concerned that some coworkers were not strictly adhering to the mask mandate. The employer continued to have full-time work available to the claimant. The claimant return to work on May 19, 2020.

Between Friday, June 5, 2020 and Monday, June 8, 2020, the claimant briefly quarantined at home after learning that his mother had contracted COVID-19. During the week that ended June 6, 2020, the claimant worked the majority of week, earned \$300.74 in regular wages, used \$218.72 in vacation pay benefits and earned an additional \$23.00 in overtime pay. The claimant total compensation for the week that ended June 6, 2020 was \$542.46.

Effective November 24, 2020, the claimant commenced an approved leave of absence. On November 23, 2020, the claimant obtained a note from his cardiologist. The note stated:

John R Palmer was recently evaluated.

John is at higher risk for complications if he contracted Covid 19, due to coronary artery disease.

If you have further questions, please do not hesitate to call.

The medical note did not state the doctor had advised the claimant to quarantine at home and the doctor had given no such advice. The claimant obtained identical notes on December 4 and December 18, 2020. The claimant obtained a similar note from his doctor on January 4, 2021. However, the January 4 note added the following: "JOHN WILL ALWAYS BE AT HIGHER RISK FOR COVID-19 COMPLICATIONS."

The claimant expected to receive holiday pay for that week that ended November 28, 2020, which included the Thanksgiving holiday. The claimant does not believe he received holiday pay for that week.

The leave was approved through March 5, 2020, but the claimant returned early in February 2021.

The claimant established an original claim for benefits that was effective March 29, 2020. Iowa Workforce Development set the weekly benefit amount for regular benefits at \$518.00. Hy-Vee is the sole base period employer. The claimant made weekly claims for each of the weeks between March 29, 2020 and February 6, 2021.

For the week that ended April 4, 2020, the claimant reported wages that exceeded his weekly benefit amount by more than \$15.00 and did not receive benefits.

For each of the six weeks between April 5, 2020 and May 16, 2020, the claimant reported zero wages and received \$518.00 in regular benefits, as well as \$600.00 in Federal Pandemic Unemployment Compensation (FPUC).

For the weeks that ended May 23 and May 30, 2020, the claimant reported wages that exceeded his weekly benefit amount by more than \$15.00 and received no benefits.

For the week that ended June 6, 2020, the claimant reported June 6, 2020, the claimant reported \$301.00 in regular benefits, reported \$219.00 in vacation pay, and received \$127.00 in regular benefits and \$600.00 in FPUC benefits.

For each of the weeks between June 7, 2020 and November 21, 2020, the claimant reported wages that exceeded his weekly benefit amount by more than \$15.00 and received no benefits.

For the week that ended November 28, 2020, the claimant reported \$430.00 in holiday pay and received \$210.00 in regular benefits.

For each of the weeks between November 29, 2020 and January 23, 2021, the claimant reported zero wages and received \$518.00 in regular benefits. The claimant also received \$300.00 in Federal Pandemic Unemployment Compensation (FPUC) for each of the weeks between December 27, 2020 and January 23, 2021.

For the weeks that ended January 30 and February 6, 2021, the claimant reported zero wages, but received no benefits.

The claimant discontinued his unemployment insurance claim following the benefit week that ended February 6, 2021.

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.

If a claimant individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. Iowa Code section 96.7(2)(a)(2)(a).

The evidence in the record establishes that the claimant was on a leave of absence during the period of November 24, 2020 through the benefit week that ended February 6, 2021, when he discontinued his claim for benefits. The claimant had requested the leave of absence and the employer had approved the leave of absence. While the claimant was on the voluntary leave of absence, the employer continued to have the same work available for the claimant, but the claimant was not available for work within the meaning of the law. The claimant is not eligible for benefits for the period beginning November 22, 2020 through the benefit week that ended February 6, 2021.

DECISION:

The January 29, 2021, reference 01, decision is affirmed. The claimant was on a leave of absence and not available for work within the meaning of the law during the period of November 24, 2020 through February 6, 2021. The claimant is not eligible for benefits for the period beginning November 22, 2020 through the benefit week that ended February 6, 2021.



James E. Timberland
Administrative Law Judge

July 1, 2021
Decision Dated and Mailed

jet/mh