

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

PATRICK DEEM
Claimant

GIPH RESTAURANTS LLC
Employer

APPEAL 20A-UI-03944-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/22/20
Claimant: Appellant (4)

Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search

STATEMENT OF THE CASE:

On May 11, 2020, Patrick Deem (claimant/appellant) filed a timely appeal from the April 30, 2020 (reference 01) unemployment insurance decision that denied benefits based on a finding claimant had voluntarily quit without good cause attributable to employer.

A telephone hearing was held on May 29, 2020. The parties were properly notified of the hearing. The claimant participated personally. Giph Restaurants (employer/respondent) participated by supervisor Steve Scott.

ISSUE(S):

- I. Is claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant worked for employer part-time as a shift manager. Claimant's first day of employment was July 2019. The last day claimant worked on the job was approximately March 15, 2020. Claimant's immediate supervisor was Don Utesch.

Claimant took a leave of absence beginning March 15, 2020. Claimant took a leave of absence due to back pain and the pandemic. For several weeks leading up to the leave of absence, claimant had shortened his shift from four to three hours to try to alleviate his back pain. Then, when the pandemic hit, claimant decided to take time off to rest his back and to self-isolate. As of the date of hearing, claimant's leave of absence was continuing.

Claimant did not request nor was he offered accommodations aside from shortening his shift. However, it appears unlikely an accommodation would have been possible. Claimant's position included making pizzas, taking orders, and delivering pizza. He did have work-related restrictions, including limited bending, twisting, lifting, and so on, that he was largely able to work within.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the April 30, 2020 (reference 01) unemployment insurance decision that denied benefits is MODIFIED in favor of appellant. Claimant is not available for work effective March 15, 2020, as he was on a leave of absence.

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. 871-24.23(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 was on a leave of absence beginning March 15, 2020. Claimant is not eligible for benefits during any such leave, as he is not available for work during that time. If claimant is no longer on a leave of absence, he may contact the department about his change in availability.

DECISION:

The April 30, 2020 (reference 01) unemployment insurance decision that denied benefits is MODIFIED in favor of appellant. Claimant is not available for work effective March 15, 2020, as he was on a leave of absence, and continuing until he is available for work.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

July 7, 2020
Decision Dated and Mailed

abd/scn

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>.