

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AHMED YOSIF
Claimant

MAINSTREAM LIVING INC
Employer

APPEAL 20A-UI-10930-AW-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 06/21/20
Claimant: Appellant (1R)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2)j – Benefit Eligibility Conditions – Leave of Absence
Iowa Admin. Code r. 871-24.23 – Availability Disqualifications

STATEMENT OF THE CASE:

Claimant filed an appeal from the August 24, 2020 (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on October 27, 2020 at 3:00 p.m. Claimant participated. Employer participated through Abby Day, Human Resources Manager. Employer's Exhibits 1 - 3 were admitted.

ISSUES:

Whether claimant was able to and available for work.
Whether claimant was on an approved leave of absence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began his employment as a full-time Direct Support Professional with Mainstream Living on August 19, 2019. Claimant requested a leave of absence from employer beginning April 27, 2020 and continuing until Iowa State University resumed for the Fall 2020 semester as claimant is a student there. Employer granted claimant's leave of absence.

When claimant's leave of absence was set to expire, employer discussed claimant's return to work. Claimant did not have transportation to and from work. Employer tried to accommodate claimant by placing him at a work site closer to his residence. Claimant stopped answering employer's communications. On September 24, 2020, employer sent claimant a text message stating that if he did not reply by September 28, 2020, then employer would terminate his employment. Claimant did not reply. Employer terminated claimant's employment on September 28, 2020.

The issue of claimant's separation from employment has not yet been the subject of a Benefits Bureau fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was not able to and 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(4), (10) provide:

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

(4) If the means of transportation by an individual was lost from the individual's residence to the area of the individual's usual employment, the individual will be deemed not to have met the availability requirements of the law. However, an individual shall not be disqualified for restricting employability to the area of usual employment. See subrule 24.24(7).

(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.

An individual claiming benefits has the burden of proof that he or she is able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

Claimant requested and was granted a leave of absence. While on leave, claimant lost his means of transportation to and from work. Claimant has not established that he is genuinely attached to the labor market. Claimant is not eligible for unemployment insurance benefits. Accordingly, benefits are denied.

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>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.

DECISION:

The August 24, 2020 (reference 02) unemployment insurance decision is affirmed. Claimant is not able to and available for work. Benefits are denied.

REMAND:

The separation issue is remanded to the Benefits Bureau of Iowa Workforce Development for a fact-finding interview and unemployment insurance decision.



Adrienne C. Williamson
Administrative Law Judge
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November 2, 2020
Decision Dated and Mailed

acw/scn