

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KENT L ANDERSON
Claimant

DAN DEERY MOTOR CO OF WATERLOO
Employer

APPEAL 20A-UI-06415-AW-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 03/15/20
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(10) – Availability Disqualifications – Leave of Absence

STATEMENT OF THE CASE:

Claimant filed an appeal from the June 10, 2020 (reference 01) unemployment insurance decision that found claimant was not able to and available for work effective March 15, 2020. The parties were properly notified of the hearing. A telephone hearing was held on July 22, 2020, at 2:00 p.m. Claimant participated. Employer participated through Brian Jensen, Service Manager. Claimant's Exhibit A was admitted.

ISSUE:

Whether claimant is able to and available for work.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a part time Shuttle Driver with Dan Deery Motor Company from March 2016 until his employment ended on July 7, 2020. On March 20, 2020, claimant requested a leave of absence due to his concerns about contracting Covid-19 and upon the advice of his physicians. Employer granted claimant's request. Employer had work available for claimant if he had not requested a leave of absence. Claimant returned to work for employer on June 10, 2020. Claimant worked his regular hours from June 10, 2020 until July 7, 2020, when he quit his employment. There has been no initial investigation and decision regarding claimant's separation from employment. The issue of separation should be remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was not able to work and available for work from March 15, 2020 until June 9, 2020. Benefits are denied from March 15, 2020 until June 6, 2020.

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.

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

Claimant was on an approved leave of absence from March 15, 2020 until June 9, 2020 and, thus, was not available for work. Accordingly, benefits are denied from March 15, 2020 until June 6, 2020.

The issue of claimant's separation should be remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

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 June 10, 2020 (reference 01) unemployment insurance decision is affirmed. Claimant was not able to and available for work from March 15, 2020 until June 9, 2020. Benefits are denied from March 15, 2020 until June 6, 2020.

REMAND:

The issue of whether claimant's separation is disqualifying is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.



Adrienne C. Williamson
Administrative Law Judge
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July 29, 2020
Decision Dated and Mailed

acw/scn