

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DENISE M YOCHUM
Claimant

FBG SERVICE CORPORATION
Employer

APPEAL 20A-UI-13331-SC-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 08/02/20
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions
Iowa Admin. Code r. 871-24.23(10) – Able & Available – Leave of Absence

STATEMENT OF THE CASE:

On October 26, 2020, Denise M. Yochum (claimant) filed an appeal from the October 22, 2020, reference 01, unemployment insurance decision that denied benefits effective August 2, 2020, based upon the determination she was not able to and available for work. After due notice was issued, a telephone hearing was held on December 18, 2020. The claimant participated personally. FBG Service Corporation (employer) did not respond to the hearing notice and did not participate. No exhibits were offered into the record.

ISSUE:

Was the claimant able to work, available for work, and actively and earnestly seeking work effective August 2, 2020?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began working for the employer effective January 15, 2019, as a part-time cleaner. The employer agreed to schedule her for work four hours a week Monday through Friday.

On August 3, 2020, the claimant's supervisor notified her that she might have been exposed to COVID-19. The claimant is age 66 and told the employer that she was afraid to return to work. The claimant and employer agreed she could take some time off. The claimant returned to work on September 4.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not able to and available for work effective August 2, 2020. Regular unemployment insurance 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) provides, in relevant part:

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.

(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.

...

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.

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 to prove that she is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. The claimant requested, and the employer granted, a leave of absence. Therefore, she was voluntarily unemployed and is not eligible for unemployment insurance benefits. Regular unemployment insurance benefits are denied.

DECISION:

Regular Unemployment Insurance Benefits Under State Law

The October 22, 2020, reference 01, unemployment insurance decision is affirmed. The claimant was not able to work and available for work effective August 2, 2020. Benefits are denied.

Pandemic Unemployment Assistance (PUA) Under the Federal CARES Act

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, she may be eligible for federally funded unemployment insurance benefits under the CARES Act. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that, in general, provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount in FPUC through July 25. This decision does not address whether the claimant is eligible for PUA. For a decision on such eligibility, the claimant must self-certify for PUA, as noted in the instructions provided in the "Note to Claimant" below.



Stephanie R. Callahan
Administrative Law Judge

January 11, 2021
Decision Dated and Mailed

src/mh

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 self-certify for PUA to determine your eligibility under the program.** Additional information on how to self-certify 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.