

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**TIMOTHY R PENISTEN**  
Claimant

**HY-VEE INC**  
Employer

**APPEAL 20A-UI-12585-DZ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/26/20  
Claimant: Appellant (1R)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.23(10) – Able & Available – Availability Disqualifications

**STATEMENT OF THE CASE:**

On October 9, 2020, the claimant filed an appeal from the October 6, 2020, (reference 02) unemployment insurance decision that denied benefits based on claimant not being available for work due to a leave of absence. The parties were properly notified about the hearing. A telephone hearing was held on November 24, 2020. Claimant participated and testified. Employer participated and testified. Claimant's Exhibits A and B were admitted.

**ISSUES:**

Is the claimant able to and available for work?  
Is the claimant on a voluntary leave of absence?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on January 29, 2020. Claimant worked as a full-time food production worker in employer's food production warehouse. Claimant's last day of work was April 13, 2020.

In March 2020, the United States declared a public health emergency because of the COVID 19 pandemic. Due to the pandemic, employer advised claimant and all of its employees to stay home if they felt sick. On April 13, 2020, claimant called in sick. Claimant called a COVID 19 health hotline for medical information. Claimant did not see a medical professional. Claimant did not return to work when he felt better due to his concern about the pandemic's potential impact on his and his roommates' health and his concern that employer wasn't taking adequate steps to protect him from the pandemic. Claimant was specifically concerned that employer would not tell him how many of his co-workers tested positive for COVID 19.

On May 6, 2020, claimant requested that he be placed on a leave of absence due to his concern about the pandemic. In response employer told claimant that he would have to make his request for a leave of absence in-person. Claimant did not make the in person request. Claimant instead voluntarily quit.

On, May 21, 2020, claimant spoke with employer on the phone. As a result of the conversation, employer completed the necessary paperwork and approved claimant for a leave of absence. Claimant was not aware that employer had approved him for a leave of absence. Employer scheduled claimant to work on May 27, May 28 and May 29, 2020. Claimant did not work those days because he had already voluntarily resigned.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, this administrative law judge concludes that claimant is not able and available for work effective April 26, 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. 871-24.23(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.

Here, claimant chose not return to work when he felt better. Claimant took this action based on his valid, but general, concerns about COVID 19's potential impact on his and his roommates' health and his concern that employer wasn't taking adequate steps to protect him from the pandemic. Claimant has not established that he was able to and available for work effective April 26, 2020, his original claim date, even under the United States Department of Labor's guidance to flexibly interpret this requirement. See Unemployment Insurance Program Letter No. 10-20. Therefore, claimant is not eligible for regular, state-funded unemployment insurance benefits from the effective date of the claim.

Regarding the leave of absence employer approved for claimant on May 21, 2020, claimant was already unable to and unavailable for work at that time.

Even though claimant is not eligible for regular unemployment insurance benefits under state law, the claimant may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136. 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 (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed.

**DECISION:**

The October 6, 2020, (reference 02) unemployment insurance decision is affirmed. The claimant is not available for work effective April 26, 2020, and regular, state-funded unemployment insurance benefits are denied.

**REMAND:**

The issue of claimant's separation from employment, as delineated in the Findings of Fact, is remanded to the Benefits Bureau of Iowa Workforce Development for initial investigation and determination.



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Daniel Zeno  
Administrative Law Judge

December 8, 2020  
Decision Dated and Mailed

dz/scn

**NOTE TO CLAIMANT:**

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. 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.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA, you may be r**