

MADISON HEARING OFFICE  
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**APPEAL TRIBUNAL  
DECISION**

State of Wisconsin  
Department of Workforce Development  
Unemployment Insurance Division

Mailed for:

MADISON WI 53704-2133

**Hearing No. 2000-5619ND**

In the matter of:

Employee:  APPELLANT

B.C. & S.S. No.: 05/\*\*\*-\*\*-

vs.

Employer: DEPARTMENT OF ADMINISTRATION  
RESPONDENT

UI Account No.:  JA

**APPEAL RIGHTS**

SEE THE DATE BELOW FOR THE TIME LIMIT.

IF YOU ARE APPEALING BECAUSE YOU FAILED TO APPEAR FOR THE SCHEDULED HEARING AND ARE REQUESTING A NEW HEARING, FOLLOW THE FAILURE TO APPEAR PROCEDURES ON THE REVERSE SIDE.

IF YOU ARE APPEALING FOR ANY OTHER REASON, YOU MUST FOLLOW THE PETITION PROCEDURES ON THE REVERSE SIDE.

IF YOU DO NOT UNDERSTAND THE PROCEDURES, PLEASE CALL THE UI HEARING OFFICE FOR ASSISTANCE.

**DECISION:** SEE ATTACHED DECISION WHICH AFFIRMS THE INITIAL DETERMINATION.

Employee appeared by:

IN PERSON

Employer appeared by:

DID NOT APPEAR

Administrative Law Judge <b>ERIC J VOLKMANN</b>	Dated and Mailed <b>AUGUST 11, 2020</b>	Petition Must Be Received or Postmarked By: <b>SEPTEMBER 1, 2020</b>
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(SEE REVERSE FOR ADDITIONAL INFORMATION)

Decision mailed to:

DEPARTMENT OF ADMINISTRATION, % PAYROLL DEPT, P O BOX 7869, MADISON, WI  
53707-7869

20025619MD

**THE DEPARTMENT'S DETERMINATION HELD:** that as of week 15 of 2020 (April 5 through 11), the claimant was not able and available for suitable work. As a result, benefits were suspended as of that week and until the claimant is able and available for suitable work.

Based on the applicable records and evidence in this case, the appeal tribunal makes the following:

#### **FINDINGS OF FACT and CONCLUSIONS OF LAW**

The claimant filed a new claim for benefits in week 15 of 2020. She was a tour guide at a state building for 25 hours per week before the agency which operated the tours stopped them due to the corona virus. No work was available for her after that. She has held this job for 10 years.

The employer did not appear for the hearing.

The claimant also worked at the polls on election days. She could sign up or not for any particular election day. It was her choice. She did not sign up to work for April 7 as she thought it was unsafe due to the virus.

The claimant reported these facts to the department. The above decision followed.

The claimant asserts she is available for full-time work if she felt the work was safe from the corona virus. No doctor told her to avoid working. She experiences no symptoms since April 5 (week 15). She has not applied for new jobs since her layoff. She has not refused other work. She expects to return to work as a guide when the agency allows the tours. She plans to work at the polls on the next election day.

The claimant asserted she should be considered available to work as of week 15. This contention cannot be sustained.

Available for work means that the claimant maintains an attachment to the labor market and is ready to perform full-time suitable work in the claimant's labor market area. During any week, a claimant is not available for suitable work if he or she has withdrawn from the labor market due to restrictions on his or her availability for work.

**DWD 128.01 (7) Covid-19.** (a) Notwithstanding any other subsection in this section, the department shall consider a claimant to be available for suitable work if the claimant is perceived by an employer as exhibiting COVID-19 symptoms preventing a return to work, or the claimant is quarantined by a medical professional due to COVID-19 symptoms, or the claimant is instructed to stay home under local, state or federal government direction or guidance due to COVID-19, and one of the following applies:

20005619MD

1. The employer has instructed the claimant to return to work after the employee no longer exhibits symptoms, after a set amount of time to see if the disease is present, or after the quarantine is over.

2. The employer has not provided clear instruction for the claimant to return to work.

3. The claimant would be available for other work with another employer but for the perceived COVID-19 symptoms preventing a return to work or but for the quarantine.

In this case, the employee has not regularly worked 32 hours per week for several years. Her avoidance of working the polls on the April election day does not make her unavailable to work. However, she was not working full-time before her layoff and she is not applying for new jobs. As she would not work at a new job unless she determined the job to be safe, the full picture presented is that she is withdrawn from the full-time labor market and is not available for work.

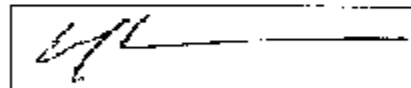
In considering the emergency rule DWD 128.01(7), the employee has not experienced symptoms and was not quarantined by her doctor or an employer. Consequently, numbers 1 through 3 are not met and the emergency rule does not apply.

The appeal tribunal finds that as of week 15 of 2020, the claimant was not able to work and available for suitable work, within the meaning of Wis. Stat. § 108.04(2)(a) and Wis. Admin. Code § DWD 128.

### DECISION

The department's determination is affirmed. Accordingly, the claimant is not eligible for benefits as of week 15 of 2020 (week starting April 5) and until she is again able and available for suitable work.

APPEAL TRIBUNAL



By.

Eric J. Volkmann  
Administrative Law Judge

**NOTE:** You may qualify for Pandemic Unemployment Assistance (PUA) if you meet certain conditions. If you have not already done so, logon to **[my.unemployment.wisconsin.gov](https://my.unemployment.wisconsin.gov)** and use the link on your dashboard to apply for PUA online.