

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**TRAVIS DIXON**  
Claimant

**IA VETERANS HOME - MARSHALLTOWN**  
Employer

**APPEAL 17A-UI-05893-NM**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/14/17**  
**Claimant: Appellant (2)**

Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.23(10) – Availability Disqualifications – Leave of Absence

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the June 6, 2017, (reference 06) unemployment insurance decision that denied benefits based upon claimant's unavailability to work due to a voluntary leave of absence. The parties were properly notified of the hearing. An in-person hearing was held on June 28, 2017 in Des Moines, Iowa. The claimant participated and testified. The employer participated through Division Administrator Penny Culter-Bermudez. Food Service Director Melissa Sienknecht was also present on behalf of the employer but did not testify. Claimant's Exhibits A through D and Employer's Exhibits 1 through 3 were received into evidence.

**ISSUE:**

Is the claimant on an approved voluntary leave of absence?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a food service worker beginning April 14, 2014. In January 2017, claimant began experiencing pain in his neck and shoulders. Claimant saw his doctor, who concluded his pain was caused by a work-related injury that would need surgery to repair. On January 30, 2017, claimant's doctor restricted him from pushing or pulling carts by himself. (Exhibit C). On March 20, 2017, claimant's doctor further restricted him from lifting pots and pans. (Exhibit B). The employer initially accommodated claimant's restrictions, allowing him to perform other job duties. However, in March 2017, the employer's doctor concluded, following a 45 minute evaluation, he did not believe claimant's injury was work-related. There is currently ongoing litigation regarding whether claimant's injury was work-related.

On March 21, 2017 a meeting was held between the claimant and the employer, where claimant was informed the employer would no longer be accommodating his work restrictions. The employer testified it was not able to accommodate these restrictions any longer, but admitted that had its doctor concluded the injury was work-related, they would have continued on with the

accommodation that had been in place since January. Once the employer concluded it would no longer accommodate claimant, he was placed on a medical leave of absence. (Exhibit 2). Claimant testified he was willing, ready, and able to work, but could only do so within his restrictions. Claimant was on the medical leave of absence, beginning March 28, 2017, until June 27, 2017, when he was separated from employment. (Exhibit 1).

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

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work

Iowa Code § 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(1), (2) provides:

Benefits 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.

(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.

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, the claimant began his leave of absence when the employer determined it would no longer accommodate his work restrictions. The claimant provided credible testimony that he was willing, ready, and able to work if the employer would allow him to return with his medical restrictions. The employer's decision not to do so was the sole basis for claimant's leave. Accordingly, while claimant was on an approved leave of absence, this leave was not voluntary and benefits are allowed. Claimant is able to and available for work effective May 14, 2017.

**DECISION:**

The representative's decision dated June 6, 2017, (reference 06) is reversed. The claimant's leave of absence was not voluntary and he is able to work and available for work effective May 14, 2017. Benefits are allowed, provided he is otherwise eligible.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

nm/scn