

**BEFORE THE  
EMPLOYMENT APPEAL BOARD  
Lucas State Office Building  
Fourth floor  
Des Moines, Iowa 50319**

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**LELAND H HUTCHISON**

Claimant

and

**KAPSTONE CONTAINER CORPORATION**

Employer

**HEARING NUMBER: 17BUI-08227**

**EMPLOYMENT APPEAL BOARD  
DECISION**

**N O T I C E**

**THIS DECISION BECOMES FINAL** unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

**A REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

**SECTION: 96.4-3**

**D E C I S I O N**

**UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE**

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

**FINDINGS OF FACT:**

Leland Hutchison started working for Kapstone Container Corp. (Employer) in September of 2016. He last performed services for the Employer on March 30, 2017. The Claimant reported to the Employer a work-related injury on December 1, 2016. The Employer provided medical care and treatment. The Claimant was released to return to work with restrictions on his wrist. The Claimant suffered a non-work-related knee injury and had surgery on February 10, 2017. The Claimant was released to return to work without restrictions on his knee.

Following further aggravation of his condition, the Claimant's private physician restricted the Claimant from working until June 28, 2017. The Employer asked the Claimant to come in to work on July 5, 2017. The Claimant meanwhile found out he was still restricted to use of his right arm only. Since the Employer had previously told the Claimant that he could not work if he still had restrictions, the Claimant did not appear on July 5. The doctor scheduled the Claimant for wrist surgery on July 20, 2017. After the surgery the Claimant understood he was released to return to work so long as he only used his right arm. The Employer did not return the Claimant to work. As of the time of hearing the Claimant was able to work only using his right arm. With these restrictions, the Claimant could pass out orders for the Employer.



The Claimant has not proven that he was available for work during the week ending July 22 since that is the week he had surgery.

### REASONING AND CONCLUSIONS OF LAW:

Iowa Administrative Code 871 IAC 24.22(2) states:

- a. 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.
- b. 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.
- c. 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.
- d. The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

Similarly, rule 871 IAC 24.23(10) states:

24.23 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.

As we have found, the evidence does not show that the Claimant requested a leave of absence following June 28. The Claimant did have surgery on July 20 and he has not proven that he was available for work during the week ending July 22. So we deny benefits for the week ending July 22. But otherwise, following June 28, the Claimant merely provided the Employer with restrictions and he was not returned to work by the Employer. This is not a leave “negotiated with the consent of both parties” and was not “claimant requested”. It was an involuntary leave of absence and thus an involuntary period of unemployment. We emphasize that we do not find this to be involuntary merely because the Claimant did not voluntarily have work restrictions. Under *White v. Employment Appeal Board*, 487 N.W.2d 342 (Iowa 1992) a non-work injury that forced an employee to ask for leave would not negate the fact that the employee consented to the leave and was voluntarily unemployed. It was the fact that the Employer – not the injury – forced the leave upon the Claimant that makes the period of unemployment here involuntary. During the relevant timeframe the Claimant did not request leave nor consent to it.

We note that the Claimant stopped filing claims for benefits following the benefit week ending August 19. As explained in the Claimant Handbook, the Notice of Hearing, the decision of the Administrative Law Judge, and documents sent to the parties by this Board, “[i]f the individual is still unemployed, they should keep filing weekly claims during the appeal process.” *2017-2018 Unemployment Insurance Handbook*, p. 17; *see also Notice of Hearing* (“Notice to Claimant: Continue Filing Weekly Claims, You should continue to file weekly claims for unemployment insurance while an appeal is pending.”); *Decision of Administrative Law Judge*, cover page (“It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits”); *EAB*

*Acknowledgement of Appeal*, (Unemployed Claimants: To protect your benefit rights

through the appeal procedure you must continue to file your claim for benefits every week even if you are appealing a denial of benefits.”); *Comiskey v. Iowa Dept. of Employment Services*, 425 N.W.2d 663 (Iowa 1988); *Witkowski v. EAB*, 2008 WL 2902064, No 07-1078 (Iowa App. July 30, 2008). The Claimant thus would not normally be allowed benefits for weeks he did not request them. But weeks subsequent to July 22 during which he did, or will, file claims benefits are not denied on the basis of his not being able and available, *assuming* he is otherwise eligible.

We also note that since we deny benefits for the benefit week ending July 22, 2017, the week of his surgery, we today only remove two of the three weeks of overpayment.

**DECISION:**

The administrative law judge’s decision dated August 31, 2017 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was able and available for benefits as indicated in our decision. Accordingly, the Claimant is allowed benefits provided the Claimant is otherwise eligible.

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Kim D. Schmett

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Ashley R. Koopmans

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James M. Strohman

RRA/fnv