

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

LEAH R NAYLOR
Claimant

APPEAL NO. 17A-UI-10996-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 09/24/17
Claimant: Appellant (2)

Iowa Code section 96.4(3) – Able & Available
Iowa Code section 96.4(3) – Still Employed Same Hours and Wages
Iowa Code section 96.7(2) – Employer Liability

STATEMENT OF THE CASE:

Leah Naylor filed a timely appeal from the October 18, 2017, reference 02, decision that denied benefits effective September 24, 2017, based on the claims deputy that Ms. Naylor was on a leave of absence that she requested and employer approved and the further conclusion that Ms. Naylor was voluntarily unemployed and not available for work. After due notice was issued, a hearing was held on November 14, 2017. Ms. Naylor participated. Jeaneth Ibarra represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 17A-UI-10997-JTT. The administrative law judge took official notice of the agency's administrative record of benefits disbursed to the claimant (DBRO).

ISSUES:

Whether Ms. Naylor was able to work and available for work during the two-week period of September 24, 2017 through October 7, 2017.

Whether during that same two-week period Ms. Naylor was on a leave of absence that she requested and the employer approved.

Whether during that same two-week period Ms. Naylor was partially unemployed or temporarily unemployed.

Whether the employer's account may be assessed for benefits paid to the claimant for that same two-week period.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Leah Naylor commenced her full-time employment with Tyson Fresh Meats, Inc. in 2015 and continues in the employment at this time. Ms. Naylor works on the kill floor trimming hogs' ears. The work requires that Ms. Naylor be on her feet constantly except for when she is on break. Ms. Naylor's work hours are 6:30 a.m. to 3:15 p.m., Monday through Saturday.

In July 2017, Ms. Naylor discovered that she had a significant infection in the sole of her foot. Ms. Naylor sought medical evaluation and treatment. From July 18, 2017 until August 21, 2017, Ms. Naylor was on an approved medical leave of absence that she requested and the employer approved. Ms. Naylor returned to work on August 21, 2017, experienced significant pain in her affected foot while performing her work duties on August 23, and commenced a second approved medical leave of absence effective August 24, 2017. Ms. Naylor returned to work on September 4, 2017. Ms. Naylor continued to work until September 14, 2017, when she reported to the nurse's station due to blood pooling under the skin of her affected foot. At that time, Ms. Naylor commenced a third approved medical leave of absence.

Ms. Naylor returned to the doctor for further evaluation and treatment and was released to return to work without restrictions effective September 25, 2017. Ms. Naylor had appropriately informed her doctor of the nature of her work. Her doctor released her to return to work with the understanding of the nature of employment. Prior to releasing Ms. Naylor to work, Ms. Naylor took appropriate precautions to protect her affected foot from potential workplace contaminants. Ms. Naylor wrapped the affected foot in a waterproof sports wrap bandage. Ms. Naylor wore the required waterproof, steel-toe boots. Ms. Naylor had concluded antibiotic treatment in August 2017. Prior to returning to work, Ms. Naylor confirmed that the company nurse, Elizabeth Calmer, R.N., had received the medical release that released Ms. Naylor to return to work without restrictions effective September 25, 2017.

On the morning of Monday, September 25, 2017, Ms. Naylor appeared for her scheduled shift and reported to the nurse's station pursuant to the employer's protocol. Ms. Calmer examined Ms. Naylor's foot and told Ms. Naylor that she did not feel comfortable allowing Ms. Naylor to return to work at that time. Ms. Naylor was upset by Ms. Calmer's decision not to allow her to return to work and protested that she had bills to pay and needed to return to work. Ms. Naylor was not experiencing any pain in her foot, had adequately protected her foot and was ready to return to her regular duties. Ms. Calmer compelled Ms. Naylor to remain off work. Ms. Naylor remained available to report to work throughout the week.

On Wednesday, October 4, 2017, the employer allowed Ms. Naylor to return to work. Ms. Naylor had been available for work on Monday and Tuesday of that week. Ms. Naylor worked her shifts on October 4, 5 and 6, but called in an absence on Saturday, October 7, so that she could rest her foot over the weekend pursuant to advice from her doctor. Ms. Naylor returned to work on Monday, October 9, 2017 and continues in the full-time employment.

Ms. Naylor established a claim for unemployment insurance benefits that was deemed effective September 24, 2017. Tyson Fresh Meats, Inc. is the sole base period employer for purposes of the claim. Ms. Naylor made a weekly claim for the week that ended September 30, 2017. She had no wages to report for that week and received \$490.00 in unemployment insurance benefits. Ms. Naylor also made a weekly claim for the week that ended October 7, 2017. Ms. Naylor reported the \$391.00 in gross wages she earned by working Wednesday, Thursday and Friday of that week and received \$221.00 in reduced unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

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(1)a 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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

Iowa Admin. Code r. 871-24.22(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.

Iowa Admin. Code r. 871-24.23(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

Iowa Admin. Code r. 871-24.23(10) provides:

(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.

Iowa Admin. Code r. 871-24.23(29) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

Iowa Admin. Code r. 871-24.23(35) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(35) Where the claimant is not able to work and is under the care of a physician and has not been released as being able to work.

An individual shall be deemed *temporarily unemployed* if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed *due to a plant shutdown, vacation, inventory, lack of work or emergency* from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated. Iowa Code Section 96.19(38)(c).

An individual shall be deemed partially unemployed in any week in which, while employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars. Iowa Code Section 96.19(38)(b).

If the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. Iowa Code section 96.7(2)(a)(2)(a).

Because Ms. Naylor only claimed unemployment insurance benefits for the two week period of September 24, 2017 through October 7, 2017, the administrative law judge need only focus on that two week period. The weight of the evidence in the record establishes that Ms. Naylor was both able to work and available for work during the two-week period. Ms. Naylor was released by her doctor to return to work without restrictions effective Monday, September 25, 2017. Ms. Naylor presented the employer with appropriate medical documentation indicating that she had been released by her doctor to return to work without restrictions. The company nurse elected to second-guess the physician and declined to allow Ms. Naylor to return to work at that time. While Ms. Naylor had been on prior medical leaves of absence that she had requested and the employer approved, Ms. Naylor did not request and was not on a leave of absence during the two-week period in question. Rather she was temporarily laid off. She remained able to work and available for work throughout the benefit week that ended September 30,

2017, but the employer did not have work for her that week. She remained able to work available for work during five of the six workdays in the benefit week that ended October 7, 2017, but was partially unemployed during that week. The employer had no work for her on Monday and Tuesday. She worked Wednesday through Friday. There was only one workday on which she was not available to work, Saturday. Because she was available for work during the majority of the week, she met the availability requirement for that week. Ms. Naylor is eligible for the benefits she received for the two-week period of September 24, 2017 through October 7, 2017, provided she meets all other eligibility requirements. The employer's account may be charged for those benefits.

DECISION:

The October 18, 2017, reference 02, decision is reversed. The claimant was able to work and available for work within the meaning of the law during the two-week period of September 24, 2017 through October 7, 2017. The claimant was not on a leave of absence during that two-week period. The claimant was temporarily laid off effective September 25, 2017 and continued on temporary layoff until the employer allowed her to return to work on Wednesday, October 4, 2017. The claimant returned to work at that time, but was partially unemployed during week that ended October 7, 2017. The claimant is eligible for benefits for the two-week period of September 24, 2017 through October 7, 2017, provided she is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs