

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARIBEL VASQUEZ

Claimant

APPEAL 16A-UI-12513-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY

Employer

OC: 10/23/16

Claimant: Appellant (2)

Iowa Code § 96.4(3) – Able and Available

Iowa Admin. Code r. 871-24.23(10) – Availability Disqualifications – Leave of Absence

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the November 14, 2016 (reference 01) unemployment insurance decision that found claimant was ineligible for unemployment benefits because she requested and was granted a leave of absence and not available for work. The parties were properly notified of the hearing. A telephone hearing was held on December 9, 2016. The claimant, Maribel Vasquez, participated personally and with an Interpreter through CTS Language Link. The employer, Swift Pork Company, did not participate. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits record.

ISSUE:

Is the claimant able to work and available for work?

Did the claimant request and was given a leave of absence?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The facts in this matter are undisputed. Claimant was employed full-time for this employer beginning in January of 2007. In November of 2013 claimant sustained a work-related injury. She was restricted from lifting, pulling or pushing more than fifty pounds due to this injury. Claimant was moved from her current position to a position on the fresh pack line. Claimant's job duties in the fresh pack line consisted of packing meat into five pound containers and then sealing them. Claimant filed a worker's compensation claim regarding her 2013 injury and that matter is still being litigated.

On October 12, 2016 claimant was told that she would be moved to a different job position. However, this new position would require her to lift more than fifty pounds. As such, her employer instructed her to visit her doctor to see if she was still restricted from lifting more than fifty pounds. Claimant visited with her doctor and her doctor restricted her to lifting no more than ten pounds from the floor to waist and no more than twenty pounds from the waist and higher. She gave the employer her new restrictions on October 14, 2016. She was then told that due to these new restrictions she could no longer work on the fresh pack line. Claimant has not been allowed to return to work. Claimant never requested a leave of absence. Claimant is

able to perform her job duties on the fresh line pack within her current lifting restrictions. Claimant is available for work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did not request a leave of absence and is able to and available for work effective October 23, 2016.

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 § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

However, 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.

To be able to work, "[a]n 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." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871-24.22(1). "An evaluation of an individual's ability to work for the purposes of determining that individual's eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides." *Sierra* at 723. The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that "[i]nsofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

In this case claimant never requested a leave of absence, rather her employer will not let her return to work based upon her ten and twenty pound lifting restrictions. Inasmuch as the injury is considered work-related for the purposes of unemployment insurance benefits only and the treating physician has released the claimant to return to work, even with restrictions, the claimant has established her ability and availability to work. Because the employer had no work available or was not willing to accommodate the work restrictions, benefits are allowed.

DECISION:

The November 14, 2016 (reference 01) unemployment insurance decision is reversed. The claimant never requested a leave of absence and is able to and available for work. Benefits are allowed, provided she is otherwise eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/