

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ROBERT W RALEY
Claimant

SECURITAS SECURITY SERVICES USA
Employer

APPEAL NO. 20A-UI-06241-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Appellant (1)

Iowa Admin. Code ch. 871 r. 24.23(10) – Leave of Absence
Iowa Code § 96.4-3 – Able and Available
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Federal Law PL 116-136 Sec. 2104 – Eligibility for Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated June 4, 2020 reference 01, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on July 21, 2020. Claimant participated personally and had witness Justin Raley. Employer did not participate.

ISSUES:

Whether claimant is able and available for work?

Whether claimant is on an approved leave of absence?

Whether claimant has been overpaid state unemployment benefits?

Whether claimant is eligible to receive Federal Pandemic Unemployment Compensation?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant worked as a security officer for employer. Claimant was injured at work in February 2020 when he slipped and fell. Claimant was off work for a couple of weeks and was on FMLA during this period. Claimant obtained a doctor's note allowing him to return to work on March 16, 2020 working four hours a day.

Employer told claimant that they only had 12-16 hour shifts available when claimant attempted to return to work. At this time, claimant was able and available to return to work, if only on a part time basis.

In the end of March, claimant had a stroke. The stroke affected claimant's memory and speech, although his physical body was not affected. Claimant has not been released to return to work since the date of his stroke.

REASONING AND CONCLUSIONS OF LAW:

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.

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. 871-24.23(35) provides:

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

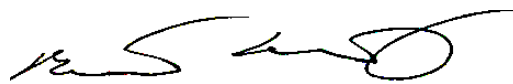
(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

In this matter, claimant has not established being able and available for work for any specified period since the filing of his unemployment claim. Claimant has established himself as being able and available for work (and therefore for unemployment benefits) as a partially unemployed person as of March 16, 2020. As claimant was released to work, but only released to work on a part time basis, claimant might be eligible for partial unemployment benefits. Unfortunately, claimant was not able to produce any documentation as to when he had his debilitating stroke. If such information was produced, claimant might be eligible for partial unemployment from March 16 through the date of the stroke. Since the date of the stroke, claimant has not shown that he has been able and available for work as claimant has not produced any doctor's note releasing him to work. Inasmuch as the most recent illness was not work-related and the treating physician has not released the claimant to return to work, the claimant has not established the ability to work. Benefits are withheld until such time as the claimant obtains a full medical release to return to work.

Note to Claimant: Even though claimant is not eligible for regular unemployment insurance benefits under state law, he may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed. **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.

DECISION:

The decision of the representative dated June 4, 2020, reference 01 is affirmed. Claimant is not eligible to receive unemployment insurance benefits until such time that he shows that he is released by his doctor to return to work.



Blair A. Bennett
Administrative Law Judge

July 28, 2020
Decision Dated and Mailed

bab/scn