

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

STEVEN E WEGNER
Claimant

OAK VIEW FARMS LLC
Employer

APPEAL NO. 20A-UI-07417-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/05/20
Claimant: Appellant (1R)

Iowa Admin. Code ch. 871 r. 24.23(10) – Leave of Absence
Iowa Code § 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated June 24, 2020 reference 01, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on August 7, 2020. Claimant participated personally and with attorney Roger Sutton. Employer participated by Cindy Butikofer. Employer's Exhibits 1-5 were admitted into evidence.

ISSUE:

Whether claimant is able and available for work?

Whether claimant is on an approved leave of absence?

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 full time welder for employer. In March, employer expressed Covid concerns to claimant as a result of claimant's oxygen tank usage and COPD.

Claimant went to his doctor on March 30, 2020 and his doctor requested that claimant be excused from work until further notice because of Covid concerns. Claimant moved to a leave of absence on April 7, 2020. Claimant went back to his doctor on May 27, 2020, and his doctor requested that claimant continue to be off work until further notice.

Claimant stated at the hearing that he was still not able to return to work out of concern for the Covid and its potential effect on him with his medical problems.

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.

Inasmuch as the 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.

DECISION:

The decision of the representative dated June 24, 2020, reference 01 is affirmed. Claimant is not eligible to receive unemployment insurance benefits, effective April 5, 2020, provided claimant meets all other eligibility requirements.

This matter is remanded to the benefits bureau for a determination on overpayments of state and FPUC benefits to claimant, if any.



Blair A. Bennett
Administrative Law Judge

August 14, 2020
Decision Dated and Mailed

bab/sam