

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOHN REDEKER
Claimant

PARCO LTD
Employer

APPEAL 20A-UI-09612-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/19/20
Claimant: Appellant (2)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2)j – Benefit Eligibility Conditions – Leave of Absence
Iowa Admin. Code r. 871-24.23(10) – Availability Disqualifications – Leave of Absence

STATEMENT OF THE CASE:

Claimant filed an appeal from the July 30, 2020 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on September 28, 2020, at 9:00 a.m. Claimant participated. Judy Redeker, claimant's mother, participated as claimant's non-attorney representative and witness. Employer participated through Juliet Diaz, Human Resources Manager. No exhibits were admitted.

ISSUES:

Whether claimant is able to and available for work.
Whether claimant is on an approved leave of absence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began his employment as a part-time crew member with Parco LTD on October 9, 2019. Employer is a fast food restaurant. Claimant works in the dining room of the restaurant. Employer closed its dining room in March 2020 due to Covid-19 but continued operating its drive through. On or about March 28, 2020, a manager told claimant that he could go home and return to work when the dining room reopened. The manager told claimant that he was not sure what other jobs claimant could perform to assist with the drive through operations due to claimant's mental disability. Claimant filed an initial claim for unemployment insurance benefits effective April 19, 2020.

On August 4, 2020, employer told claimant that he could return to work and cook fries even though the dining room remained closed. Claimant returned to work August 4, 2020. Between March 28, 2020 and August 4, 2020, claimant was not sick or hospitalized, out of town, incarcerated or self-employed. Claimant had transportation to and from work. Claimant had no barriers to employment. Claimant believed he had been sent home from work until the dining room reopened and would have worked if he understood employer had other work available.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is able to and available for work. Benefits are allowed.

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(2)j provides:

Benefit 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.

j. 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.

(1) 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.

(2) 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.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

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.

An individual claiming benefits has the burden of proof that he is able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

Claimant did not request a leave of absence from employer. Claimant was told to go home and return when the dining room was reopened. Employer did not adequately communicate to claimant that it had other work available for claimant to perform while the dining room was closed. Claimant has been able to and available for work and, thus, is eligible for unemployment insurance benefits. Accordingly, benefits are allowed.

DECISION:

The July 30, 2020 (reference 01) unemployment insurance decision is reversed. Claimant is able to and available for work since filing his initial claim for benefits effective April 19, 2020. Benefits are allowed.



Adrienne C. Williamson
Administrative Law Judge
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October 9, 2020
Decision Dated and Mailed

acw/sam