

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**ANDREW J GUITER**  
Claimant

**RELCO LOCOMOTIVES INC**  
Employer

**APPEAL 16A-UI-13201-DB-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/30/16**  
**Claimant: Appellant (5R)**

---

Iowa Code § 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

The employer/appellant filed an appeal from the December 1, 2016 (reference 01) unemployment insurance decision that found claimant was able to and available for work. The parties were properly notified of the hearing. A telephone hearing was held on January 4, 2017. The claimant, Andrew J. Guiter, did not participate. The employer, Relco Locomotives Inc, participated through Attorney Debra Rectenbaugh Pettit; witness Tim Ash; and witness Chelsea Bachman. Employer's Exhibits 1 – 11 were admitted. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits record including the fact finding documents.

**ISSUE:**

Is the claimant able to and available for work?

**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 began his employment on September 8, 2015. He was employed full-time as a painter. His last day physically worked on the job was October 31, 2016. On November 1, 2016 claimant was placed on indefinite suspension from employment. See Exhibit 1. Claimant has not been allowed to return to work. Claimant was not laid off for lack of work.

The claimant's unemployment insurance benefits record establishes that he has reported he is able to and available for work. However, he has not been allowed to return to work by the employer.

There has not been an initial investigation and determination with regard to the claimant's separation from employment by the Benefits Bureau of Iowa Workforce Development. This matter should be remanded on this issue.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is able to and available for work effective October 30, 2016. However, claimant's unemployment was not due to a short-term layoff for lack of work.

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".

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)).

Claimant was placed on indefinite suspension by the employer. Claimant is able to and available for work but was not allowed back to work.

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. *In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.*

(emphasis added).

The issue of claimant's separation from employment is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

**DECISION:**

The December 1, 2016 (reference 01) unemployment insurance decision is modified with no change in effect. The claimant is able to and available for work. Benefits are allowed, provided he is otherwise eligible.

**REMAND:** The separation issue delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

---

Dawn Boucher  
Administrative Law Judge

---

Decision Dated and Mailed

db/