

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TERRY L WILSON
Claimant

O'REILLY AUTOMOTIVE INC
Employer

APPEAL 19A-UI-09450-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/27/19
Claimant: Appellant (4)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

On December 2, 2019, the claimant filed an appeal from the November 25, 2019, (reference 01) unemployment insurance decision that denied benefits based on claimant's availability for and ability to work. The parties were properly notified about the hearing. A telephone hearing was held on December 27, 2019. Claimant participated personally and through witness Tina Wilson. Employer participated through store manager Eric McNeill. Claimant's Exhibit A was received. Employer's Exhibits 1 through 3 were received.

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: Claimant began working for employer in spring 2014. Claimant is a full-time retail service specialist.

On October 24, 2019, claimant attempted to take his own life and was hospitalized. Claimant missed his shift at work that day. On October 24, 2019, one of claimant's family member's spoke with store manager Eric McNeill and informed him of what occurred. McNeill spoke with other family members on October 25, 2019, and let them know he was going to put in paperwork that would allow claimant to request a medical leave of absence. On October 25, 2019, claimant was discharged from the hospital with no restrictions.

Claimant did not want to go on medical leave, but based on information he received from family members, he believed it was a foregone conclusion.

On October 28, 2019, claimant contacted employer's human resource department. Claimant asked for help filing a workers' compensation claim as he attributed the situation to his work schedule. Claimant also informed the human resource representative that he was not seeking Family and Medical Leave Act (FMLA) leave. The representative informed claimant that if he

was not approved for FMLA, he would be terminated for unexcused absences pursuant to employer's attendance policy.

On November 4, 2019, employer mailed claimant paperwork informing claimant that he had 15 days to provide medical documentation in order to be approved for Family and Medical Leave Act (FMLA) leave. Although claimant received the letter, he did not provide the documentation by the stated deadline.

On November 8, 2019, employer sent claimant a letter informing him that his claim for workers' compensation benefits had been denied and that he should submit his medical bills to his group health carrier.

On November 20, 2019, claimant had a fact finding interview with Iowa Workforce Development. Employer was also on the line. During the interview, claimant explained that he never asked for medical leave and wanted to return to work. Employer stated that he needed to provide a medical release and then he could return to work.

On November 21, 2019, claimant provided a doctor's note releasing him to return to work without restrictions. Claimant returned to work and worked a partial week.

As of November 24, 2019, claimant returned to work on a full-time basis.

REASONING AND CONCLUSIONS OF LAW:

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

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(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.

In this case, no medical provider put any restrictions on claimant's ability to work effective October 27, 2019. Claimant did not request a medical leave of absence and did not provide supporting documentation necessary to be approved for a medical leave of absence. The employer did offer claimant that option in order to protect his job, but ultimately allowed him to report back to work and did not terminate his employment for his attendance infractions.

Claimant has established he was able to and available for work from October 27, 2019, until he returned to work on November 23, 2019, and that the only reason he was not at work during that time period was because employer was instead encouraging him to apply for medical leave.

DECISION:

The November 25, 2019, (reference 01) decision is modified in favor of claimant. The claimant is able to work and available for work from October 27, 2019, through November 24, 2019, and benefits are allowed during that time period.



Christine A. Louis
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December 31, 2019
Decision Dated and Mailed

cal/scn