

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DANNY L ALCANTARA MATEO
Claimant

SMITHFIELD FRESH MEATS CORP
Employer

APPEAL NO. 21A-UI-05198-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/30/20
Claimant: Appellant (2R)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 9, 2021, reference 02, decision that denied benefits for the period beginning August 30, 2020, based on the deputy's conclusion that the claimant requested and was granted a leave of absence, was voluntarily unemployed and was not available for work. After due notice was issued, a hearing was held on April 21, 2021. Claimant participated. The employer did not provide a telephone number for the hearing and did not participate. Spanish-English interpreter Christian Fonseca of CTS Language Link assisted with the hearing. Exhibits A, B and C were received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO, KCCO and the January 26, 2021, reference 01, decision.

ISSUES:

Whether the claimant was able to work and available for work for the period beginning August 30, 2020.

Whether the claimant was partially and/or temporarily unemployed for the period beginning August 30, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant established an original claim for benefits that was effective August 30, 2020. Iowa Workforce Development set the weekly benefit amount for regular benefits at \$531.00. As of the appeal hearing date, the claimant had made weekly claims for each of the weeks between August 30, 2020 and March 27, 2021. The claimant received regular benefits for each of the weeks between August 30, 2020 and December 26, 2020 and for each of the weeks between January 3, 2021 and January 30, 2021.

Smithfield Foods is the sole base period employer. The claimant commenced his employment with Smithfield in 2014 and last performed work for the employer on July 25, 2020. Until March 31, 2020, the claimant worked as a full-time warehouse worker. The work involved putting labels on boxes, stacking empty boxes, and handling other boxes that might weigh up to 50 pounds.

At some point between 2019 and March 31, 2020, the claimant suffered a right shoulder injury in the course of performing his work duties. The claimant provided contradictory testimony regarding when the shoulder injury occurred. The claimant advises that he underwent surgery on his shoulder in 2019. The claimant testified that he was eventually released to return to work without restrictions in connection with the shoulder issue, but medical documentation provided by the claimant suggests otherwise. The injury occurred while the claimant was stacking boxes. The claimant was in a rush to get through the work. The claimant experienced pain in his right shoulder as he picked up a box. The claimant went to the company nurse, who completed an injury report. The claimant returned to regular duties for the remainder of the shift, but continued to experience pain. The claimant made repeated trips to see the nurse regarding his shoulder pain and the nurse repeatedly returned him to his regular duties. A month after the claimant injured his shoulder, he injured his back.

The employer sent the claimant to the doctor on March 31, 2020. The doctor restricted the claimant from "repetitive bending, or lifting more than 10lbs. no lifting higher than shoulder height, will re-evaluate on May 1, 2020, due to back pain." The employer then assigned the claimant to perform light-duty work. The claimant underwent additional medical evaluation that included referral to another doctor and an MRI.

The claimant continued on medical restrictions and continued to perform light-duty work until July 25, 2020. At that time, the employer told the claimant that his medical restrictions had "expired" and directed the claimant to return to his regular duties. The claimant had in fact not recovered sufficiently to return to his regular duties and was in continued need of light-duty work that met his medical restrictions. The claimant declined to return to his regular duties out for concern that the work would reinjure his shoulder or back. The claimant requested to be moved to a different, less taxing position. The employer rejected the request and told the claimant that only his regular duties were available.

The claimant has provided a September 4, 2020 from Dr. Luft that states:

Danny has a permanent restriction of no lifting greater than 10 pounds with the right arm. No over shoulder lifting with the right arm. No frequent reaching with the right arm. With restrictions on his back he would have no lifting greater than 25 pounds with both arms and no frequent bending or twisting.

REASONING AND CONCLUSIONS OF LAW:

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) 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.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

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 96.1A(37) provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

If a claimant individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. Iowa Code section 96.7(2)(a)(2)(a).

The evidence establishes a separation that occurred on July 25, 2021. The claimant was clearly in need of the continued reasonable accommodations associated with his work injuries, but the employer elected to no longer provide the accommodations effective July 25, 2020. Because the evidence establishes a July 25, 2021 separation, the claimant cannot be deemed to have been *temporarily or partially* unemployed since he established the claim that was effective August 30, 2020. Nor has the claimant been on a leave of absence since July 25, 2021.

The question is whether the claimant has been available for any kind of work since August 30, 2020. The claimant's permanent medical restrictions appear in the September 4, 2020 note from Dr. Luft: no lifting greater than 10 pounds with the right arm, no over-shoulder lifting with the right arm, no frequent reaching with the right arm, no frequent bending or lifting more than 25 pounds using both arms. In addition, there is a reference to additional issues with the claimant's back that require a restriction against bending or twisting. The combination of medical restrictions in effect since the claimant established the August 30, 2020 original claim would at first glance lead a reasonable person to conclude that the claimant has not been able to work or available for work. However, the claimant remained ready, willing and able to perform the light-duty work he had performed for the employer for months, thus indicating there is work the claimant is able to perform despite his medical restrictions. For this reason, the administrative law judge concludes the claimant has been able to work and available for work since he established the original claim for benefits that was effective August 30, 2020. The claimant is eligible for benefits, provided he meets all other eligibility requirements.

The claimant has been coded as a job-attached claimant, even though he has not been attached to the Smithfield job since he filed his claim for benefits. Because the claimant was coded as job-attached, the Iowa Workforce Development weekly claims reporting system has not prompted the claimant to input work search information. This matter will be remanded to the Benefits Bureau so that the claimant may be recategorized as a group 6 claimant.

This matter will also be remanded to the Benefits Bureau for a fact-finding interview and initial determination of the issues pertaining to the July 25, 2020 separation.

DECISION:

The February 9, 2021, reference 02, is reversed. The claimant has been able and available for work since establishing the August 30, 2020 claim for benefits. The claimant is eligible for benefits, provided he meets all other eligibility requirements.

This matter is **remanded** to the Benefits Bureau so that the claimant may be recategorized as a group 6 claimant.

This matter is **remanded** to the Benefits Bureau for a fact-finding interview and initial determination of the issues pertaining to the July 25, 2020 separation.



James E. Timberland
Administrative Law Judge

August 3, 2021
Decision Dated and Mailed

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