

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHRISTOPHER G WILSON
Claimant

SWIFT PORK COMPANY
Employer

APPEAL 22A-UI-01303-AR-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/14/21
Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871—24.23(10) – Voluntary Leave of Absence

STATEMENT OF THE CASE:

The claimant, Christopher G. Wilson, filed an appeal from the December 13, 2021, (reference 01) unemployment insurance decision that denied benefits based upon the determination that claimant is on an approved leave of absence effective November 14, 2021. The parties were properly notified of the hearing. A telephone hearing was held on February 7, 2022. The claimant participated personally. The employer, Swift Pork Company, did not participate. The administrative law judge took official notice of the administrative record.

ISSUES:

Is claimant able to and available for work effective November 14, 2021?
Is claimant on an approved leave of absence effective November 14, 2021?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant became employed with the employer on October 19, 2019. He works as a boiler and refrigeration mechanic. He remains employed with the employer as of the date of his unemployment appeal hearing.

Claimant last worked on January 15, 2021. Since that time, he has been on a medical leave due to long-term effects of COVID-19. Claimant has been off work based on his physician's recommendation. His physician has restricted claimant from working entirely, and, as of the date of the hearing, has not released claimant to return to work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work effective November 14, 2021.

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.

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.

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. Emp't Appeal Bd.*, 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. Emp’t 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)).

Inasmuch as the treating physician has not released the claimant to return to work with or without restriction, claimant has not established his ability to work while still an employee of this employer effective November 14, 2021.

DECISION:

The December 13, 2021, (reference 01) unemployment insurance decision is affirmed. The claimant is not able to work and available for work effective November 14, 2021. Benefits are withheld until such time as the claimant obtains a full medical release to return to work, offers his services to the employer, and no suitable, comparable work is available considering reasonable accommodation; or if he is involuntarily separated before that time.



Alexis D. Rowe
Administrative Law Judge

March 2nd, 2022
Decision Dated and Mailed

ar/rs