

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**JIMMY A SANDOVAL**  
Claimant

**APPEAL NO: 15A-UI-10427-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WEBSTER CITY CUSTOM MEATS INC**

**OC: 08/23/15**  
**Claimant: Appellant (1)**

Section 96.4-3 – Able and Available  
871 IAC 24.23(10) – Voluntary Leave of Absence

**STATEMENT OF THE CASE:**

Jimmy Sandoval (claimant) appealed a representative's September 15, 2015, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits as of August 23, 2015, because he was unable to work with Webster City Custom Meats (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for September 30, 2015. The claimant participated personally. The employer participated by Constance Ingraham, President.

**ISSUE:**

The issue is whether the claimant is able and available for work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked for the employer from August 12, 2013, to the present. The claimant had knee surgery on July 20, 2015. He requested and was granted Family Medical Leave (FMLA). His physician would not allow him to work from July 20 through August 26, 2015. On August 27, 2015, his physician wrote a note indicating the claimant could work a desk job but the claimant could not stand. The employer did not have work for the claimant where he did not stand. The employer is willing to put the claimant back to work if he can perform 70 to 80 percent of his job duties. The claimant's FMLA expires in two weeks and the claimant expects to be released to return to work without restrictions at that time.

The claimant filed for unemployment insurance benefits with an effective date of August 23, 2015.

**REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge concludes the claimant is not able and available for work as of August 23, 2015.

Iowa Admin. Code r. 871-24.23(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

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.

When an employee is ill and unable to perform work due to that medical condition, he is considered to be unable to work. When an employee requests and is granted a leave of absence, he is considered to be voluntarily unemployed. The claimant requested a medical leave of absence and the employer granted his request. The request was initiated by the claimant. The claimant had surgery and was unable to work for this employer from July 20 to the present. He is considered to be unable for work during that time. He is considered to be voluntarily unemployed during the period of the medical leave of absence. The claimant is disqualified from receiving unemployment insurance benefits beginning August 23, 2015, when he applied for unemployment insurance benefits, because he was not able and available for work

**DECISION:**

The representative's September 15, 2015, decision (reference 01) is affirmed. The claimant is disqualified from receiving unemployment insurance benefits because he is not able and available for work with the employer.

Should circumstances change and the disqualification can be removed, notification should be made to the local workforce development center.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/css