

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JORGE PEREZ PEREZ

Claimant

APPEAL NO. 22A-UI-07579-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY

Employer

OC: 03/06/22

Claimant: Appellant (2)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

On March 30, 2022, Jorge Perez (claimant) filed a timely appeal from the March 31, 2022 (reference 02) decision that denied benefits effective March 6, 2022, based on the deputy's conclusion that the claimant requested and was approved for a leave of absence, was voluntarily unemployed, and was not available for work. After due notice was issued, a hearing was held on May 5, 2022. Claimant participated. The employer did not comply with the hearing notice instructions to call the designated toll-free number at the time of the hearing and did not participate. Exhibit A, the April 5, 2022 Accommodation Review Form, was received into evidence at the time of the hearing. The administrative law judge took official notice of the following Agency administrative records: DBRO, KCCO, WAGE-A and WAGE-C. The administrative law judge left the hearing record open for the limited purpose of allowing the claimant to submit relevant medical documentation for the period of August 2021 to the present and work search documentation for the period beginning March 6, 2022 to the present. On May 5, 2022, the claimant submitted a packet of materials that were received into the record as Exhibit B. The claimant did not submit any work search information.

ISSUES:

Whether the claimant was able to work and available for work for the period beginning March 6, 2022.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant began full-time meat production employment with Swift Pork Company in May 2020 and last performed work for the employer on August 12, 2021. For most of the employment the claimant's duties involved taking containers of bacon to the wash yard, washing the container, and returning the container to the production line. The claimant worked day shift hours that would start at 5:30 or 5:45 a.m. and that would end at 3:00 p.m. The claimant worked Monday through Friday and most Saturdays.

On June 19, 2021, the claimant suffered a workplace fall and back injury that required the claimant to go off work. The claimant subsequently returned to full-time light-duty work with the

employer. The employer assigned the claimant to sanitize tables in the employee dining room. The claimant continued to perform this light-duty work until on or about August 11, 2021.

Though the claimant denies he requested to go off work in August 2021, he has provided a medical document that indicates otherwise. The claimant has provided a medical document, dated August 11, 2021, which states as follows:

Mr. Perez has a dense cataract in the left eye which has rendered him legally blind and affects his depth perception. He is unable to drive safely and unable to do work that requires excellent vision in both eyes and excellent depth perception, including heavy lifting, operating machinery, operation power tools. Please excuse him from work at this time for medical reasons, pending eye surgery to restore his vision.

The claimant underwent surgery on his eye in August 2021 and in November 2021.

The claimant has provided a document, dated November 4, 2021, from the employer's third-party short-term and long-term disability benefits administrator, Unum. The document denies short-term disability benefits, based on Unum's determination that the "reported disability was caused by, contributed to by, or resulted from a work related condition."

The claimant has provided a medical scan record, dated November 23, 2021 that indicates a complaint of low back pain with radiation down left leg. The scan record indicates a "Grade 1 spondylolisthesis [one vertebral body is slipped forward over another] at L5-S1 level associated with bilateral pars interarticularis defects [overuse or fatigue stress fracture]. No acute compression deformities are seen."

The claimant has provide a letter, dated February 1, 2022, from the employer's human resources personnel that asserts the claimant is not in good standing due to excessive absenteeism. The document further asserts that the claimant's job has been and will be available and directs the claimant to contact the employer by February 8, 2020 or be deemed to have resigned from the employment.

The claimant has provide a medical document, dated February 5, 2022, which states:

Jorge Perez Perez was seen and treated in out emergency department on 2/4/2022. He may return to work on 02/06/2022.

Activity Restrictions:

No strenuous lifting, pushing, or pulling, No repeated bending or prolonged standing.

No standing for greater than 2 hours at a time. Restrictions apply through 2/10/2022. If not able to return to full duties by this time will need to obtain additional evaluation and work release from primary doctor.

The claimant has provided a medical document, dated February 7, 2022, which states:

Secondary to patient's pain and his recent evaluation in Iowa City, it is recommended that the patient not to stand more than 2 hours continuously, this will apply from February 11 through February 22. Patient will be seeing orthopedic specialist on February 22nd, any further restrictions will be by the specialist.

The claimant has provide a February 8, 2022, JBS Accommodation Request Form that states the claimant was requesting work that did not require the claimant to stand for more than two hours continuously.

The claimant has provided a document, dated February 21, 2022, from the employer's third-party short-term and long-term disability benefits administrator, Unum. The document denies long-term disability benefits. The document states that Unum closed the claimant's short-term disability claim September 8, 2021, because the condition that prompted the claimant to stop working on June 19, 2021, "was caused by, contributed to by, aggravated by, or resulted from an occupational illness/injury."

The claimant has provided a medical document, dated February 22, 2022, which states:

Jorge R Perez Perez was seen on 2/22/22 at the University of Iowa Hospitals and Clinics for a medical appointment.

Comments: He may return to work with the following restrictions. She be allowed to change positions (standing to sitting) every 2 hours.

The claimant has provided a medical document, dated April 4, 2022, which states:

Recommend that patient have a job where he can move periodically as prolonged standing can worsen his low back pain.

The claimant asserts that he needs to return for a follow-up visit regarding his eye, but asserts he is able to see well. The claimant continues to take pain medication for his back condition and continued to see a doctor regarding that condition.

The claimant asserts he has received no compensation from the employer since he went off work in August 2021.

The claimant has periodically met with the employer since he went off work. The employer has had the claimant sign multiple Accommodation Review Forms. The claimant met with the employer on April 5, 2020, but refused to sign the Accommodation Review Form the employer presented at that time. The form indicates the claimant's accommodate request as follows: "Have a job where he can move periodically as prolonged standing can worsen his low back pain." The document indicates that restrictions conflicted with the claimant's job. The document sets forth the employer's perspective as: "not many positions where not standing in one area, medical LOA until follow up appointment."

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.4(3) provides as follows:

96.4 Required findings. An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. a. 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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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".

b. Notwithstanding any provision of this chapter to the contrary, the department may establish by rule a process to waive or alter the work search requirements of this subsection for a claim for benefits if an individual has a reasonable expectation that the individual will be returning to employment and is attached to a regular job or industry or a member in good standing of a union therein eligible for referral for employment. To be considered attached to a regular job or industry, an individual must be on a short-term temporary layoff. If work is not available at the conclusion of the layoff period due to short-term circumstances beyond the employer's control, the employer may request an extension of the waiver or alteration for up to two weeks from the department. For purposes of this paragraph, "short-term temporary layoff" means a layoff period of sixteen weeks or less due to seasonal weather conditions that impact the ability to perform work related to highway construction, repair, or maintenance with a specific return-to-work date verified by the employer.

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).

Iowa Admin. Code r. 871-24.22(2)j(1) and (2) provides:

Benefit 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.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

The claimant has been able to work and available for work since he established the original claim for benefits that was effective March 6, 2022. since February 2022, the claimant has been released by a medical provider to return to the same light-duty work the claimant performed for the employer in July and August 2021 in connection with the June 2021 workplace injury. The employer has elected not to make that work available to the claimant, despite demonstrating the ability to provide such work without undue hardship to the employer. Since the claimant established the March 6, 2022 unemployment insurance claim, the claimant has been job attached, but laid off. The claimant is eligible for benefits, provided the claimant meets all other eligibility requirements.

DECISION:

The March 31, 2022 (reference 02) decision is reversed. The claimant has been able to work and available for work since he established the original claim for benefits that was effective March 6, 2022. Since February 2022, the claimant has been released by a medical provider to return to the same light-duty work the claimant performed for the employer in July and August 2021 in connection with the June 2021 workplace injury. The employer has elected not to make that light-duty work available to the claimant despite the workplace injury, despite the claimant's ability to perform that work, and despite the employer demonstrating in July and August 2021 the ability to provide such work without undue hardship to the employer. Since the claimant established the March 6, 2022 unemployment insurance claim, the claimant has been job attached, but laid off. The claimant is eligibility for benefits, provided the claimant meets all other eligibility requirements.



James E. Timberland
Administrative Law Judge

June 7, 2022
Decision Dated and Mailed

jet/kmj