

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SHARKARRA D TODD

Claimant

BWW RESOURCES LLC

Employer

APPEAL 21A-UI-20350-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/27/20

Claimant: Respondent (4)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview
Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

Employer filed an appeal from the September 8, 2021 (reference 03) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on November 4, 2021. Claimant participated. Employer participated through Drew Dillon, General Manager. No exhibits were admitted. Official notice was taken of the administrative record. The parties waived ten days' notice of the issue of whether claimant is able to and available for work.

ISSUES:

Whether claimant's separation was a discharge for disqualifying job-related misconduct or a voluntary quit without good cause attributable to employer.

Whether claimant was overpaid benefits.

Whether claimant should repay those benefits and/or whether employer should be charged based upon its participation in the fact-finding interview.

Whether claimant is able to and available for work.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant has been employed with BWW Resources (d/b/a Buffalo Wild Wings restaurant) part-time for over four years.

In December 2020, claimant had surgery on her back. Claimant was on a leave of absence until her physician released her to return to work in February or March of 2021. Claimant returned to work. In August 2021, claimant had a seizure. Claimant's physician has not released her to return to work. Claimant has been on a leave of absence since August 2021.

Employer considers claimant an active employee who will return to work when she is able.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes:

Claimant has not quit her employment. Employer has not discharged claimant. Claimant remains an active employee. There has not been a separation.

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 96.1A, 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".

Iowa Admin. Code r. 871-24.22(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.

(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.

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.

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.

An individual claiming benefits has the burden of proof that he or she is able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

Claimant was on a leave of absence from December 2020 until March 2021. Claimant was not released by her physician to return to work. Accordingly, claimant was not able to and available for work. Benefits are denied from December 1, 2020 until March 31, 2021.

Claimant has been on a leave of absence since August 2021. Claimant is under the care of a physician and has not been released to return to work. Claimant is not able to and available for work. Benefits are denied effective August 1, 2021.

DECISION:

The September 8, 2021 (reference 03) unemployment insurance decision is modified in favor of appellant. Claimant has not separated from employment. Claimant is not able to and available for work. Benefits are denied from December 1, 2020 until March 31, 2021 and effective August 1, 2021.



Adrienne C. Williamson
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January 5, 2022
Decision Dated and Mailed

acw/scn