

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TIMOTHY J HECKER
Claimant

MERCER HEALTH & BENEFITS ADMINIST
Employer

APPEAL 20A-UI-10454-NM-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 05/10/20
Claimant: Appellant (1R)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(1) - Able to Work - illness, injury or pregnancy
Iowa Admin. Code r. 871-24.23(35) - Availability Disqualifications

STATEMENT OF THE CASE:

On August 30, 2020, the claimant filed an appeal from the August 21, 2020, (reference 01) unemployment insurance decision that denied benefits based on a determination that he was on an approved leave of absence. The parties were properly notified about the hearing. A telephone hearing was held on October 13, 2020. Claimant, Timothy Hecker, participated. Employer did not participate. Claimant's Exhibits A through C were received into evidence.

ISSUE:

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on July 22, 2019. Claimant last worked for employer as a full-time licensed benefits counselor. Claimant has since separated from employment, but was not certain as to the date of separation. The last day claimant worked was sometime in April 2020.

In October 2019, claimant went to the emergency room with an infection. Claimant believes his infection was either caused, or made worse by, the employer's policy prohibiting breaks beyond scheduled break times, as his doctor could not find anything else medically wrong with him. Claimant continued to experience issues with the infection and was admitted to the hospital in November 2019. Claimant was released to return to work with the accommodation of more frequent breaks. Complications with the infection continued into 2020 and in April, the employer agreed to allow claimant to go on an unpaid medical leave of absence, when it could not accommodate his request for more frequent breaks without additional information from his provider. (Exhibits A and B). Claimant could not recall when he was released to return to work without accommodation. Claimant started a new job on October 8, 2020.

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 May 10, 2020.

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(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. Employment Appeal Board*, 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. Empl. 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)).

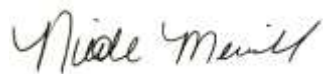
Here, the claimant was off work due to a recurring infection. While the claimant may believe the infection was caused by or made worse by the employer's inability to accommodate frequent breaks, he has not provided sufficient evidence to support this belief. The employer is not obligated to accommodate a non-work related medical condition. Benefits are withheld until such time as the claimant obtains a full medical release to return to work. Since the employment ended prior to the claimant receiving a full-release to return to work, claimant was no longer obligated to return to employer upon his medical release to offer his services. At that point, his ability to work is not measured by the job he held most recently, but by standards of his education, training, and work history.

DECISION:

The August 21, 2020, (reference 01) unemployment insurance decision is affirmed. The claimant is not able to work and available for work effective May 10, 2020. Benefits are withheld until such time as the claimant is able to return to work for which he is qualified, provided he is otherwise eligible.

REMAND:

The issue of claimant's separation, as delineated in the Findings of Fact, is remanded to the Benefits Bureau of Iowa Workforce Development for initial investigation and determination.



Nicole Merrill
Administrative Law Judge

October 26, 2020
Decision Dated and Mailed

nm/sam