

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SOLOMON A DOLEBO
Claimant

TYSON FRESH MEATS INC
Employer

APPEAL 21A-UI-16835-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/04/21
Claimant: Appellant (4R)**

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Admin. Code r. 871-24.23(10) – Leave of Absence

STATEMENT OF THE CASE:

On July 30, 2021, the claimant/appellant filed an appeal from the July 28, 2021, (reference 01) unemployment insurance decision that disallowed benefits based on claimant requesting and granted a leave of absence. The parties were properly notified about the hearing. A telephone hearing was held on September 23, 2021. Claimant participated during the hearing. Employer did not register a number to participate in the hearing prior to the hearing and therefore did not participate in the hearing. Administrative notice was taken of claimant's unemployment insurance benefits records.

ISSUES:

Is the claimant able to work and available for work effective April 4, 2021?

Is the claimant voluntarily unemployed due to a requested leave of absence?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on September 11, 2017. Claimant last worked as a full-time fork lift operator.

On April 3, 2021, claimant informed the employer that he was resigning because his child was ill and his father was in poor health. Claimant was having a tough time focusing on work and was concerned about his co-worker's safety since he operated a fork lift. The employer informed claimant that he did not need to quit but could apply for FMLA leave to preserve his job while he was going through this difficult time. Claimant's leave of absence started on April 3, 2021.

Claimant was informed on May 3, 2021, that he was not approved for FMLA leave. On June 18, 2021, claimant went to the employer and informed them that he was resigning. Claimant gave his work equipment to the employer.

Claimant continued to care for his father and child and was not able to work due to their illnesses. On July 27, 2021, claimant's father passed away.

On August 5, 2021, claimant began looking for work and was able to return to work. Claimant has accepted a new job and is expected to begin the job the last week of September 2021.

Claimant's separation from this employer has not been investigated by the Benefits Bureau and an initial decision has not been made.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that claimant was on a leave of absence beginning on April 3, 2021 through June 18, 2021, and is denied benefits:

Iowa Code § 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 § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 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. 24.22(2) provides:

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.

h. *Available for part of week.* Each case must be decided on its own merits. Generally, if the individual is available for the major portion of the workweek, the individual is considered to be available for 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.

(3) The period or term of a leave of absence may be extended, *but only if there is evidence that both parties have voluntarily agreed.*

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.

The claimant testified that he was going to resign his position on April 3, 2021, because he was going through a difficult time due to his father and his child's illnesses. The employer informed the claimant that he did not need to resign but could apply for FMLA to preserve his position with the company while he was going through the difficult time. Claimant applied for FMLA and submitted documents to see if he could get approved for FMLA. Since the claimant attempted to use the FMLA provided by the employer the claimant was still employed with the employer at this time. Ultimately the claimant was not approved for FMLA, however, the employer allowed the claimant to take this unpaid time off to be with his family. The claimant went to the employer on June 18, 2021, and turned in his work equipment. The claimant was separated from employment at that time. As a result, the claimant was on a voluntary leave of absence from April 3, 2021 through June 18, 2021. The claimant ended the leave of absence on June 18, 2021 when he separated from the employer.

Next it must be determined if claimant was able to work and available for work after June 19, 2021. The administrative law judge finds, claimant was not available for work from June 19, 2021 through August 4, 2021.

The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work. Claimant was caring for his ill father and child and testified he could not work during that time. Claimant testified that he was not ready to return to work until August 5, 2021. As a result, claimant was not willing or ready to accept suitable work from June 19, 2021 through August 4, 2021. Claimant was ready to resume working and started looking for work on August 5, 2021. Claimant is able and available for work effective August 5, 2021. Since August 5, 2021, was a Thursday, claimant is not considered available for a major portion of the workweek and claimant is not eligible for benefits until week ending August 14, 2021.

DECISION:

The July 28, 2021, (reference 01) unemployment insurance decision is modified in favor of appellant. The claimant was not able to and available for full-time work effective April 3, 2021, through the benefit week-ending August 7, 2021, and benefits are disallowed for that time period. Claimant is able to work and available for work beginning week ending August 14, 2021. Benefits are allowed, provided the claimant is otherwise eligible.

REMAND:

The issue of claimant's separation is remanded to the Benefits Bureau for an investigation and initial determination.



Carly Smith
Administrative Law Judge
Unemployment Insurance Appeals Bureau

September 28, 2021
Decision Dated and Mailed

cs/scn

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.