

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

THOMAS A SLOAN
Claimant

POLARIS INDUSTRIES INC
Employer

APPEAL 21A-UI-16484-DZ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/28/20
Claimant: Appellant (1)

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:

Thomas A Sloan, the claimant/appellant, filed an appeal from the July 20, 2021, (reference 01) unemployment insurance decision that denied benefits as April 18, 2021. The parties were properly notified about the hearing. A telephone hearing was held on September 17, 2021. Mr. Sloan participated and testified. The employer participated through Caroline Tiff, human resources assistant. The administrative law judge took official notice of the administrative record.

ISSUE:

Is Mr. Sloan able to and available for work?
Is Mr. Sloan on a leave of absence?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Mr. Sloan began working for the employer on July 29, 2014. He works as full-time manufacturer.

In March 2020, the United States declared a public health emergency because of the COVID 19 pandemic. Due to the pandemic, in late April 2021, the employer began requiring employees to wear a face mask or face shield. The employer accommodated employees who provided a doctor's note.

On Wednesday, April 21, Mr. Sloan spoke to the employer's nurse and told them that he could not wear a face mask or a face shield because of a health condition he has that makes it hard for him to breathe when anything is on, or close to his nose. The nurse told Mr. Sloan he would have to either wear a face mask or face shield, or provide a doctor's note to be able to continue working. Mr. Sloan was not able to get a doctor's appointment until Friday, April 30. Mr. Sloan did not attend work from Thursday, April 22 through Monday, May 3.

On Thursday, March 22, Mr. Sloan applied for Family Medical Leave Act (FMLA) leave and short-term disability benefits through the employer's third-party administrator. On, or about

Monday, March 26, Mr. Sloan was approved for FMLA short-term disability benefits at a rate of about fifty percent of his hourly rate. The employer's plan includes a seven calendar day exclusion period during an employee who is approved for benefits is not paid. An employee who is approved is paid beginning the eighth day. The employer paid Mr. Sloan a total of \$194.00 in short-term disability benefits for April 29 through May 3.

On Tuesday, May 4, Mr. Sloan provided the employer with his doctor's note excusing him from wearing a face mask or face shield due to his medical condition, and he returned to work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Mr. Sloan is not able to and available for work from April 22, 2021 through May 3, 2021.

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. 871-24.23(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.

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

In this case, Mr. Sloan was on a leave of absence from April 22, 2021 through May 3, 2021. He requested, and the employer approved him, to be on FMLA leave during this time period. Mr. Sloan has not established that he was able to and available for work during this time period, even under the United States Department of Labor's guidance to flexibly interpret this

requirement. See Unemployment Insurance Program Letter No. 10-20. Therefore, Mr. Sloan is not eligible for regular, state-funded unemployment insurance benefits from April 22, 2021 through May 3, 2021.

DECISION:

The July 20, 2021, (reference 01) unemployment insurance decision is affirmed. Mr. Sloan is not able to work and available for work from April 22, 2021 through May 3, 2021, and regular, state-funded unemployment insurance benefits are denied during these weeks.



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September 23, 2021
Decision Dated and Mailed

dz/mh