

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JOHN D BENEDICT
Claimant

SWIFT PORK COMPANY
Employer

APPEAL 20A-UI-07682-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/03/20
Claimant: Appellant (2)

Iowa Admin. Code r. 871-24.23(10) – Voluntary Leave of Absence

STATEMENT OF THE CASE:

On July 9, 2020, John Benedict (claimant/appellant) filed an appeal from the June 30, 2020 (reference 01) unemployment insurance decision that denied benefits.

A telephone hearing was held on August 13, 2020. The parties were properly notified of the hearing. The claimant participated personally. Swift Pork Company (employer/respondent) registered a number for the hearing but was not available at the number when called.

Official notice was taken of the administrative record.

ISSUES:

Is the claimant able to and available for work?

Is the claimant on an approved 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 in 1986. Claimant is still employed there full-time in cut floor production. The last day claimant performed work for employer was April 16, 2020. Around that time, claimant submitted a doctor's note indicating he has a breathing condition that prevents him from breathing adequately with a mask on. The note indicated claimant could work with a face shield rather than a mask.

Claimant submitted this doctor's note to employer and then began calling in to report his absence each day. Claimant understood that employer would not allow him to work without a mask. Claimant later submitted to employer another doctor's note dated June 23, 2020, which stated he has preexisting medical conditions which put him at risk for infection.

There has never been a discussion between claimant and employer about reasonable accommodations which may allow him to continue working. Claimant has COPD, high blood

pressure, and a compromised immune system due to a history of cancer. Claimant has had difficulty reaching employer to discuss a return to work.

Claimant never formally requested or was granted a leave of absence. Claimant's absence from work has been unpaid.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the June 30, 2020 (reference 01) unemployment insurance decision that denied benefits is REVERSED.

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".

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)).

Claimant never formally requested or was granted a leave of absence. Claimant's absence is due to impairments which make him unable to work for employer without a reasonable accommodation. The evidence indicates claimant could work for employer with a reasonable accommodation of wearing a plastic face shield rather than a mask. However, employer has made no attempt to accommodate claimant's impairments, despite being aware of the reason for his absence and claimant's efforts to contact employer.

The administrative law judge finds the reason for claimant's unemployment is attributable to employer. Claimant is able to and available for work with a reasonable accommodation. However, employer has made no attempt to accommodate claimant. Benefits are allowed.

DECISION:

The June 30, 2020 (reference 01) unemployment insurance decision that denied benefits is REVERSED. Claimant is able to and available for work from the benefit week ending May 9, 2020. Benefits are allowed, provided claimant is otherwise qualified and eligible.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

August 24, 2020
Decision Dated and Mailed

abd/mh