

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRET M STAUSER
Claimant

ATTACHMENT TECHNOLOGIES INC
Employer

APPEAL 21A-UI-18833-CS-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/01/20
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

On August 26, 2021, the claimant/appellant filed an appeal from the August 23, 2021, (reference 01) unemployment insurance decision that disallowed benefits based on claimant requesting and being granted a leave of absence. The parties were properly notified about the hearing. A telephone hearing was held on October 15, 2021. Claimant participated at the hearing. Employer participated through Senior Human Resource Generalist, Eric Dirks. Mark Schnittjer was called as a witness for the claimant. Exhibits 1, 2, 3, 4, A, B, C, D, and E were admitted into the record. Administrative notice was taken of claimant's unemployment benefits records.

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 on August 11, 2014. Claimant last worked as a full-time Saw operator. Claimant has been on a leave of absence since May 21, 2021.

On February 2, 2021, claimant was put on a doctor's restriction limiting him to working 5 days a week, 8 hours each day due to chronic conditions. (Exhibit 2). Claimant has been diagnosed with fibromyalgia and chronic pain syndrome. Claimant was put on Tramadol but was restricted to taking it after work. On May 24, 2021, claimant's physician put him on restriction that limited him working to 3 days a week and a limit of 6 hours per day. (Exhibit 3). The claimant requested an accommodation to work in another position. The employer originally agreed to accommodate him but then retracted the accommodation prior to him starting the new position. The employer

did not think it would be safe for the claimant to work while he was on the restriction. Since the employer did not accommodate claimant's restriction they put claimant on a leave of absence.

Claimant performed a physical therapy evaluation and found that he did not meet certain criteria of his job duties. (Exhibit 4). Claimant has not been released to return to work. Claimant sustained an injury to his wrist in 2019. Claimant thinks this injury is connected to his current conditions. However no medical documentation was produced linking the claimant's chronic conditions to his employment.

Claimant filed an initial claim for benefits on November 1, 2020. Claimant stopped filing for benefits and began refiling for benefits related to this absence on July 26, 2021. (KCCO).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was not on a voluntary leave of absence. However, claimant is not able to and available for work. Benefits are denied.

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) 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. 871-24.22(2)(j) 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.

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 she is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

In this case the claimant was not on a negotiated leave of absence with the consent of both parties. The claimant was mandatorily put on a leave of absence because the employer would not accommodate the claimant's chronic conditions. However, claimant has not established that he is able to work. Claimant did not provided evidence that claimant's condition is work-related. The claimant's documentation states that "we do not have any diagnosis besides chronic pain syndrome despite seeing multiple specialist." (Exhibit B). Since claimant has not establish that his medical condition is work-related and the treating physician had not released claimant to return to work without restrictions, claimant has not established his ability to work while still an employee of Attachment Technologies, Inc. While claimant may have been able to perform light-duty work, the employer is not obligated to accommodate a non-work-related injury or condition. Because claimant has not been released to perform his full work duties, claimant is not able to or available for work. Accordingly, he is not eligible for unemployment insurance benefits.

DECISION:

The August 23 2021 (reference 01) unemployment insurance decision is affirmed. Claimant was not able to or available for work. Benefits are denied effective July 26, 2021.



Carly Smith
Administrative Law Judge
Unemployment Insurance Appeals Bureau

October 22, 2021
Decision Dated and Mailed

cs/ol

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.