

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAYMIE C QUIGLEY
Claimant

O'REILLY AUTOMOTIVE INC
Employer

APPEAL 19A-UI-09641-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 10/20/19
Claimant: Respondent (1)**

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
Iowa Admin. Code r. 871-24.23(1) – Able & Available – Availability Disqualifications
Iowa Admin. Code r. 871-24.23(10) – Leave of Absence

STATEMENT OF THE CASE:

The employer/appellant filed a timely appeal from the November 27, 2019 (reference 01) unemployment insurance decision that found claimant was eligible for unemployment benefits because she was available for her regular hours of work. It further found that the claimant was not performing services in the same pattern of employment as in the base period and the account of the employer would not be relieved of charges. The parties were properly notified of the hearing. A telephone hearing was held on January 28, 2020. The claimant, Jaymie C. Quigley, participated personally and was represented by Jon S. Geyer. The employer, O'Reilly Automotive Inc., participated through witnesses Amber Evans, Bill Reynoso, and TeJarry Sullivan-Donahue. The administrative law judge took official notice of the claimant's unemployment insurance benefits records. The parties waived notice regarding the issue of a potential leave of absence and Iowa Administrative Code rule 871-24.23(10).

ISSUES:

Is the claimant totally unemployed?
Is the claimant able to and available for work?
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 is currently a full-time employee. She began working for this employer on March 19, 2019. Her job title is retail service specialist. The employer operates an automotive parts store. Claimant's job duties include customer service, inventory of merchandise, labeling, carrying and moving automotive parts, and other duties as assigned.

On October 3, 2019, claimant was moving a box of oil and noticed a pain shoot down her leg. She told her supervisor, Ms. Sullivan-Donahue immediately about the injury and requested time

off from work to go to the doctor. Claimant was treated by her personal physician on October 7, 2019. Her physician determined that there was an injury to her sciatic nerve and a disc was pushing on it. Work restrictions were given to her which provided that she could not climb stairs or a ladder, that she could not lift more than 15 pounds, and she had to remain seated for her entire shift. These work restrictions were forwarded to the employer on October 7, 2019.

On October 8, 2019 the claimant reported to work and was sent home because the employer would not accommodate her working restrictions. Claimant visited her physician again on October 11, 2019 and received new restrictions that allowed her to stand during her shift but required that she should be able to sit for 10 minutes every hour during her shift. These restrictions were given to the employer that same date. Claimant was told that the employer was not going to accommodate these new restrictions either.

Claimant was required to visit with the employer's physician, which she did on December 16, 2019. The employer's physician opined that the injury was not work-related. Claimant has filed a worker's compensation claim. The claim is pending. Claimant had nerve problems in her back prior to working for this employer; however, she was able to perform all of her job duties prior to the October 3, 2019 injury at work. Claimant was put on a unilateral unpaid leave of absence by the employer and is not on the schedule to work at this time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code § 96.19(38)b provides:

As used in this chapter, unless the context clearly requires otherwise:

38. "Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work, or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

In this case, the claimant has not worked any hours since filing her original claim for unemployment insurance benefits. Therefore, she is considered totally unemployed and must be able to and available for work in order to be eligible for 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. 871-24.23(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

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.

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.

(emphasis added).

In this case, the injury is considered work-related for purposes of unemployment insurance benefits only. The workers' compensation case has not been resolved and claimant credibly testified that the injury was work-related.

The credible evidence establishes that the claimant never requested a voluntary leave of absence and is not voluntarily unemployed. Further, claimant has established that she is able to and available to work, even with the restrictions, and the employer had no work available or was not willing to accommodate the work restrictions. As such, benefits are allowed effective

October 20, 2019, provided the claimant is otherwise eligible. The employer's account will not be relieved of charges.

DECISION:

The November 27, 2019 (reference 01) unemployment insurance decision is affirmed. The claimant did not request a leave of absence and has established she is able to and available for work effective October 20, 2019. Benefits are allowed, provided the claimant is otherwise eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/scn