

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired as a full-time sales associate on April 9, 2002. He was off on a non-work-related medical leave of absence as of May 24, 2005. The claimant was released to return to work on August 30, 2005 but could not be put on the schedule until September 17, 2005. The employer's leave of absence policy provides that employees returning to work from a leave of absence must let the employer know two weeks prior to the return to work date, so the employer has time to place the employee back on the schedule. The claimant did not follow the policy but was unaware when he was going to be released to return to work. The claimant and the employer both had notice that the claimant was expected to be off work for approximately five weeks as of July 13, 2005.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits.

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".

871 IAC 24.22(2) 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.

(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.

The claimant has the burden of proof in establishing his ability and availability for work. Davoren v. Iowa Employment Security Commission, 277 N.W.2d 602 (Iowa 1979). The claimant was released to return to work and advised his employer of that information upon receipt. He did not advise the employer two weeks prior to his release because he was not aware he was going to be released. The claimant was allowed to return to work as of August 30, 2005 and was able and available to work from that date forward. Therefore, benefits are allowed from August 30, 2005 through September 17, 2005.

DECISION:

The unemployment insurance decision dated September 30, 2005, reference 01, is affirmed. The claimant qualifies for unemployment insurance benefits during through September 17, 2005, provided he is otherwise eligible.

sdb/kjf