

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ERICK LOPEZ
Claimant

WESTAR FOODS INC
Employer

APPEAL 21A-UI-24243-JD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 09/05/21
Claimant: Respondent (2)**

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 November 3, 2021, the employer, Westar Foods, Inc., filed an appeal from the October 25, 2021, (reference 01) unemployment insurance decision that allowed. The parties were properly notified about the hearing. A telephone hearing was held on December 22, 2021. Claimant Erick Lopez participated and testified. Employer Westar Foods, Inc., participated through hearing representative Tim Speir and Human Resources Manager, Amy Rowe. Official notice was taken of the administrative record.

ISSUES:

Is the claimant able to and available for work?
Is the claimant on a leave of absence?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Claimant has worked for employer since November 2017 as a general manager. Most recently, claimant works for employer as a full-time general manager. Claimant has been on an approved leave of absence since August 29, 2021, due to contracting Covid-19. Claimant was hospitalized for some time due to his illness and he is not yet medically cleared to return to work. The claimant may return to his job as soon as he is physically able and cleared by his physician.

Claimant's last day of work was August 29, 2021.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge finds that the claimant is not able to or available for work and is under care of a medical provider due to complications from Covid-19 and has not been medically cleared to return to 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)a 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. 871-24.23(35) provides:

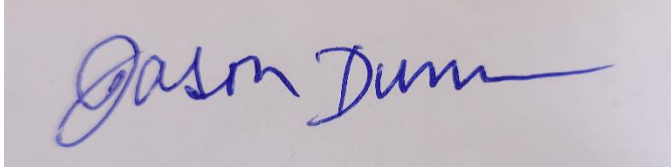
Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(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

Once the claimant is medically cleared to return to work by his physician the employer indicated that the claimant's job is available. If the claimant returns to work and there is no work available, he should then re-apply for benefits at that time. Benefits are currently denied due to claimant not being able to or available for work due to his medical issues.

DECISION:

The October 25, 2021, (reference 01) unemployment insurance decision is reversed. The claimant is not able to work and available for work effective September 5, 2021. Regular unemployment insurance benefits funded by the state of Iowa are denied.



Jason Dunn
Administrative Law Judge
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January 25, 2022
Decision Dated and Mailed

jd/mh