

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**TIMOTHY M TRUITT**  
Claimant

**KUM & GO LC**  
Employer

**APPEAL 22A-UI-00733-DZ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/24/21**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Timothy M Truitt, the claimant/appellant, filed an appeal from the November 30, 2021, (reference 01) unemployment insurance (UI) decision that denied REGULAR UI benefits as of October 24, 2021 because he was on a leave of absence. The parties were properly notified about the hearing. A telephone hearing was held on January 28, 2022. Mr. Truitt participated and testified. Debbie Wagner, Mr. Truitt's sister, participated in the hearing. Bradley Stedman, Mr. Truitt's nephew, observed the hearing. The employer did not participate in the hearing. The administrative law judge took official notice of the administrative record.

**ISSUES:**

Is Mr. Truitt able to and available for work?  
Is Mr. Truitt on a leave of absence?

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: Mr. Truitt began working for the employer in 2010. He works as a full-time overnight lead.

Mr. Truitt had surgery on this foot on October 11, 2021. He went on medical leave as of October 12. Mr. Truitt asked the employer about short-term disability, and the employer told him that he is not eligible. As of the hearing date, Mr. Truitt continues to see his doctor twice a week. Mr. Truitt's doctor has not released him to return to work.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes Mr. Truitt is not available for as of October 24, 2021, the effective date of his claim.

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. 871-24.23(1) and (10) provide:

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

(6) If an individual has a medical report on file submitted by a physician, stating such individual is not presently able to 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.

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. A person claiming benefits has the burden of proof that she is able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

In this case, Mr. Truitt continues to be in recovery and his doctor has not released him to return to work. Since Mr. Truitt is not available for work as of October 24, 2021, regular, state-funded unemployment insurance benefits are denied as that date.

**DECISION:**

The November 30, 2021 (reference 01) decision is affirmed. Mr. Truitt is not available for work as of October 24, 2021. Benefits are denied.



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February 17, 2022  
Decision Dated and Mailed

dz/mh