

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JUSTIN MALCOM
Claimant

THE AMERICAN BOTTLING COMPANY
Employer

APPEAL 21R-UI-13808-AD-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/05/20
Claimant: Appellant (3)

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

STATEMENT OF THE CASE:

On January 30, 2021, Justin Malcom (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated January 28, 2021 (reference 02) that denied benefits as of May 24, 2020 based on a finding claimant requested and was granted a leave of absence.

Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for April 6, 2021 at 1:05 p.m. A review of the Appeals Bureau's conference call system indicates that the appellant was not available at the telephone number provided for the scheduled hearing. As such, no hearing was held and a default decision was entered.

Claimant appealed the default decision to the Employment Appeal Board, which remanded for a new hearing. A telephone hearing was held on August 13, 2021. The parties were properly notified of the hearing. The claimant participated personally. The American Bottling Company (employer/respondent) participated by Manager Patrick Green.

Employer's Exhibit 1 and Claimant's Exhibits 1 and 2 were admitted. Official notice was taken of the administrative record.

ISSUE(S):

- I. Was the separation from employment a layoff, discharge for misconduct, or voluntary quit without good cause?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant worked for employer full-time as a route helper. Claimant's first day of employment was August 6, 2019. Claimant's supervisor was Josh. Claimant separated from employment voluntarily on September 22, 2020.

Claimant was out due to a work-related injury beginning December 15, 2019. He was released to full duty by the worker's compensation doctor on May 20, 2020. Claimant testified that he returned to work on May 22, 2020 and Josh told him he was on "COVID leave" and to go home.

Claimant did not inquire further at that time about the nature of the leave or how long it would last. Green testified that no such leave was implemented by employer.

At the time claimant was set to return to work he was still uneasy about returning to work because of lingering medical issues. He often had to lift heavy items in his job and was unsure that he could do so. Claimant reported to employer on May 26, 2020 that despite the release he did not feel he could return to work due to the lingering medical issues.

Employer told claimant it would send reasonable accommodation paperwork to him and requested he return it by June 15, 2020. Claimant did not return the paperwork by that date, and employer sent a certified letter on that date requesting it be returned. Employer contacted claimant via certified mail again on June 19, 2020 to notify him that it had not received the paperwork but got no response from claimant. As a result, employer deemed claimant to be on an unapproved leave of absence.

Claimant testified that he did not return the reasonable accommodation paperwork because he did not receive it. However, he knew employer wanted him to complete the paperwork but made no effort to obtain it. He does not recall whether he received the June letters notifying him that employer had not received the paperwork and requesting he return it.

Claimant made no effort to return to work until he contacted management on September 2, 2020, indicating he wished to return at that time. Employer requested claimant provide information to excuse the unapproved leave of absence. Claimant did not provide any information. Claimant was asked to provide medical documentation again at that time but chose not to do so because he was concerned it may impact his receipt of worker's compensation. Claimant is unsure whether he could have returned to work at that time due to the lingering medical issues.

Employer attempted to contact claimant on September 18 and 21, 2020, but received no response. As a result, employer sent claimant a letter dated September 22, 2020, indicating it considered him to have voluntarily resigned based of his failure to communicate or provide the requested documentation. Claimant reached out to employer several times after that about benefits and so on. Employer responded to claimant with that information.

Claimant filed a claim for benefits each week from the benefit week ending April 11, 2020 through the benefit week ending March 20, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the decision dated January 28, 2021 (reference 02) that denied benefits as of May 24, 2020 based on a finding claimant requested and was granted a leave of absence is MODIFIED in favor of respondent. Claimant is ineligible for benefits from April 5, 2020 and continuing through September 19, 2020. He is eligible for benefits after that time, provided he is not otherwise ineligible or disqualified.

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 provides in relevant part:

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.

(34) Where the claimant is not able to work due to personal injury.

(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.

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. The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that "[i]nsofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment

benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

Employers are required to make reasonable accommodations for employees with disabilities under state and federal law. See Iowa Code section 216.6; 42 U.S.C.A. § 12112. An employee who can perform the essential functions of a job with or without a reasonable accommodation is able to work. *Sierra* at 723. Employers are not required to make reasonable accommodations for employees unable to work due to injury.

The administrative law judge finds claimant is not able and available for work and therefore ineligible for benefits effective April 5, 2020 and continuing until the separation from employment. Claimant was initially unable to work due to injury and having not been released to return to work. He subsequently made himself unavailable for work by holding himself out without a medical directive and failing to communicate with employer and engage in an interactive process which may have allowed him to return with accommodation. Claimant is able and available for work effective with the date of separation, as from that time his ability and availability are no longer analyzed based on his position with employer but based on his skills, experience, and so on.

DECISION:

The decision dated January 28, 2021 (reference 02) that denied benefits as of May 24, 2020 based on a finding claimant requested and was granted a leave of absence is MODIFIED in favor of respondent. Claimant is ineligible for benefits from April 5, 2020 and continuing through September 19, 2020. He is eligible for benefits after that time, provided he is not otherwise ineligible or disqualified.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

August 20, 2021
Decision Dated and Mailed

abd/ol

Note to Claimant:

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.