

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DEAN A WINEGARDEN
Claimant

AIRGAS USA LLC
Employer

APPEAL 19A-UI-09126-JC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/20/19
Claimant: Appellant (1R)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The claimant/appellant, Dean A. Winegarden, filed an appeal from the November 12, 2019 (reference 02) Iowa Workforce Development (“IWD”) unemployment insurance decision which concluded he was ineligible from benefits due to a leave of absence. The parties were properly notified about the hearing. A telephone hearing was held on December 13, 2019. The claimant participated personally. The employer, Airgas USA LLC., participated through Courtney Williams, human resources specialist.

The administrative law judge took official notice of the administrative records including the fact-finding documents. Claimant Exhibits 1-4 were admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the claimant able to work and available for work effective October 20, 2019?
Was the claimant on a leave of absence for the week-ending October 20, 2019?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant is employed full-time as a truck driver. He last performed work on September 17, 2019, and suffered a pulmonary embolism. He was hospitalized and attempted to return to work on October 7, 2019, but failed his required DOT physical. Due to DOT guidelines, the claimant was not permitted to retest until December 18, 2019. The employer does not have non-driving work available for him. The employer maintains that the claimant is on an approved leave of absence but that he must have the approved medical clearance (which is a DOT physical) in order to return to work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not able to work and available for work.

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(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.

An individual claiming benefits has the burden of proof that he is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. In this case, the claimant is still attached to his employer, as he is on an approved leave of absence due to a personal medical condition. The claimant is unable to perform his job duties because he has not been able to medically clear the required DOT physical that is required to perform his job duties.

The employer has a legal obligation to abide by licensing and safety statutes and regulations. The claimant cannot perform his job duties for this employer without passing a DOT physical. Claimant's failure to pass a DOT physical while still attached to this employer makes him unable and unavailable for work. Accordingly, he is not eligible for unemployment insurance benefits effective October 20, 2019. Benefits are denied. If the circumstances change and the claimant believes the disqualification can be removed or permanently separates from the employer, he should contact Iowa Workforce Development.

REMAND: The claimant's temporary separation issue (which may include Iowa Code § 96.5(1)d) is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

DECISION:

The unemployment insurance decision dated November 12, 2019, (reference 02) is affirmed. The claimant is not able to and available for work effective October 20, 2019. Benefits are denied. If the circumstances change and the claimant believes the disqualification can be removed or permanently separates from the employer, he should contact Iowa Workforce Development. **REMAND:** The claimant's temporary separation issue (which may include Iowa Code § 96.5(1)d) is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Jennifer L. Beckman
Administrative Law Judge
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Decision Dated and Mailed

jlb/scn