

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

YEIMEY RISCART ABREU
Claimant

APPEAL 21A-UI-05988-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 11/29/20
Claimant: Appellant (1)

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:

The claimant/appellant, Yeimey Riscart Abreu, filed an appeal from the February 4, 2021 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits and stated he was ineligible for benefits due to a requested leave of absence. The parties were properly notified about the hearing. A telephone hearing was held on April 30, 2021. The hearing was held together with Appeal 21A-UI-05990-JC-T. The claimant participated personally and through two Spanish interpreters (Christian and Enrique) with CTS Language Link. The employer, Tyson Fresh Meats Inc., participated through Karina Mellado-Monroy. The administrative law judge took official notice of the administrative records. 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:

Was the claimant able to work and available for work effective November 29, 2020?
Was the claimant voluntarily unemployed due to a requested leave of absence?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began work in 2019 and works for this employer on a full-time basis as a mule driver.

Claimant opened his claim with an effective date of November 29, 2020. Claimant became sick and went on a medical leave of absence from December 5, 2020 to December 28, 2020. Claimant had symptoms consistent with COVID-19 but did not test positive. He was paid through short-term disability December 7-14, 2020. Work was available for claimant, had he not been sick.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge finds the claimant was not able and available for work effective November 29, 2020.

Iowa Code § 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 § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.23(10) provides:

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

Iowa Admin. Code r. 871-24.23(1) provides:

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

(1) An individual who is ill and presently not able to perform work due to illness.

For an unemployed individual to be eligible to receive benefits, he must be able to work, available for work, and actively seeking work as required by the unemployment insurance law. Iowa Code § 96.4(3). The burden is on the claimant to establish that he is able and available for work within the meaning of the statute. Iowa Code § 96.6(2); Iowa Admin. Code r. 871-24.22.

Claimant in this case was on a leave of absence beginning the week of November 29, 2020 through December 28, 2020 due to illness. Because claimant was on an approved leave of absence due to illness, he was not able and available for work according to Iowa law. Regular state-funded benefits are denied.

DECISION:

The unemployment insurance decision dated February 4, 2021, (reference 01) is affirmed. Claimant was not able and available for work effective November 29, 2020 due to an approved leave of absence. Benefits are denied.



Jennifer L. Beckman
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

May 7, 2021
Decision Dated and Mailed

jlb/scn

NOTE TO CLAIMANT:

This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.

If you do not qualify for regular unemployment insurance benefits due to disqualifying separations and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** More information about how to apply for PUA is available online at:

www.iowaworkforcedevelopment.gov/pua-information

You may find information about food, housing, and other resources at <https://covidrecoveryiowa.org/> or at <https://dhs.iowa.gov/node/3250>

Iowa Finance Authority also has additional resources at <https://www.iowafinance.com/about/covid-19-ifa-recovery-assistance/>