

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TYLER J MOFFITT
Claimant

CITY OF FORT DODGE
Employer

APPEAL 16A-UI-06215-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/03/16
Claimant: Appellant (2-R)

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

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the May 27, 2016, (reference 02) unemployment insurance decision that denied benefits based upon him not being able to and available for work because he was on a voluntary leave of absence. The parties were properly notified of the hearing. A telephone hearing was held on June 20, 2016. The claimant, Tyler J. Moffitt, participated personally. The employer, City of Fort Dodge, participated through Human Resource Director Jamie Anderson; Parks and Forestry Superintendent Kevin Lunn; and Director of Parks, Recreation and Forestry Lori Branderhorst.

ISSUES:

Is the claimant able and available for work?
Did claimant request and was he granted a voluntary leave of absence?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a seasonal general laborer on or about March 18, 2016. His job duties include mowing, trimming trees, putting trees and branches into the wood chipper and clearing weeds. There is no vacation or sick pay for seasonal employees. There is no leave of absence policy available to seasonal employees.

On March 29, 2016 claimant fell to the ground while working and began convulsing. He was taken to the hospital by ambulance. He was hospitalized for a period of time and was treated by a neurologist. His medical condition was not work related. Claimant recovered and was released to go back to work by his neurologist without any restrictions. He was medically able to work effective April 11, 2016. Claimant forwarded his neurologist's release for him to return back to work effective April 11, 2016 to his employer.

The employer has a return to work policy for its full-time employees. This policy is listed in the employee handbook. Claimant did not receive a copy of the employee handbook. The policy requires a worker to be medically cleared by a physician of the employer's choosing prior to

returning to work. Claimant was told that he needed to have employer's own physician, Dr. Nguyen, medically release him to work before he would be allowed to return. Dr. Nguyen is an occupational medicine doctor. Dr. Nguyen reviewed claimant's medical records and determined that he should be restricted from driving, operating heavy machinery, climbing and working at great heights. Part of claimant's job duties included operating a wood chipper, which was considered to be heavy machinery. Based on claimant's job duties Dr. Nguyen did not medically release the claimant to return to work. The employer does not have any light duty work available.

Claimant's neurologist also reviewed the type of machinery that claimant had to operate as part of his job duties. No work restrictions were given to claimant by his neurologist. Neither Dr. Nguyen nor claimant's neurologist testified.

Ms. Anderson and Mr. Lunn both testified that claimant is on inactive status and has not been separated from employment. Ms. Branderhorst testified that claimant was no longer an employee and that his position was replaced by another worker. Claimant has not physically worked on the job since March 29, 2016. Therefore, the question of whether the claimant is separated from employment will be remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is able to and available for work. Benefits are allowed.

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 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, (2) 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.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

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

(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.

The claimant never requested a voluntary leave of absence. In fact a leave of absence was not available to claimant due to his seasonal employment status. As such, no voluntary leave of absence was agreed to between the parties.

Claimant has received a release to go back to work from his neurologist. His neurologist reviewed the type of machinery that claimant would be operating and did not have any work restrictions in place for claimant. Inasmuch as the treating physician had released claimant to return to work without restriction effective April 11, 2016, claimant is able to and available for work. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The May 27, 2016, (reference 02) unemployment insurance decision is reversed. Claimant is able to and available for work effective April 11, 2016. Benefits are allowed, provided he is otherwise eligible. The benefits claimed and withheld shall be paid, provided he is otherwise eligible.

REMAND:

The separation issue delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/pjs