

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**ZELOTE B ALUBA**  
Claimant

**TYSON FRESH MEATS INC**  
Employer

**APPEAL NO. 21A-UI-10070-JT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/14/21  
Claimant: Appellant (1R)**

Iowa Code Section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

The claimant, Zelote Aluba, filed a timely appeal from the March 25, 2021, reference 01, decision that denied benefits effective February 14, 2021, based on the deputy's conclusion that that the claimant requested and was granted a leave of absence, was voluntarily unemployed and was not available for work. After due notice was issued, a hearing was held on June 24, 2021. Claimant participated. Lori Direnzo represented the employer. French-English interpreter Moussa Sarr (#10761) of CTS Language Link assisted with the hearing. Exhibit A was received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO and KPYX.

**ISSUES:**

Whether the claimant has been able to work and available for work since February 14, 2021.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was most recently employed as a full-time janitor at Tyson Fresh Meats, Inc. The claimant most recently performed work for the employer on November 23, 2020. On November 24, 2020, the claimant was injured in a non-work related motor vehicle accident and suffered bilateral rib injury that required surgery on November 25, 2020 and a week-long hospitalization. The claimant has remained off work and under a doctor's care since the injury occurred. The claimant participated in physical therapy from March 2021 until the beginning of May 2021. The physical therapy was prompted by the claimant's doctor's determination that the claimant's was not healing correctly. Despite a medical record that indicates the claimant was released to return to work without restrictions effective May 3, 2021, the claimant advises that his doctor extended his time off work to July 1, 2021. The employer deems the claimant to be on a leave of absence that is set to expire on June 29, 2021. The claimant has a follow-up medical appointment set for June 28, 2021, at which time his doctor will re-evaluate whether the claimant may be released to return to work.

The claimant established an original claim for unemployment insurance benefits that was effective February 14, 2021. The claimant made weekly claims for the five weeks between

## REASONING AND CONCLUSIONS OF LAW:

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(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.

(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) and (35) 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.

...

(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.

The claimant has not been able to work or available for work since he established the original claim that was effective February 14, 2021. The claimant has since that date been unable to work due to injury, under a doctor's care, and not released to return to work. Since that date,

the claimant continued on a leave of absence from his employment with Tyson Fresh Meats, Inc. Benefits are denied effective February 14, 2021.

This matter will be remanded to the Benefits Bureau for entry of overpayment decisions regarding the regular and FPUC benefits the claimant received for the five weeks between February 14, 2021 and March 20, 2021.

**DECISION:**

The March 25, 2021, reference 01, decision is affirmed. The claimant has not been able and available for work since establishing his original claim for benefits. Benefits are denied effective February 14, 2021.

**REMAND:**

This matter is **remanded** to the Benefits Bureau for entry of overpayment decisions regarding the regular and FPUC benefits the claimant received for the five weeks between February 14, 2021 and March 20, 2021.



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James E. Timberland  
Administrative Law Judge

July 6, 2021  
Decision Dated and Mailed

jet/kmj