

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARIA D GONZALEZ
Claimant

SWIFT PORK COMPANY
Employer

APPEAL 21A-UI-17684-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/18/21
Claimant: Appellant (2)**

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:

Maria D Gonzalez, the claimant/appellant, filed an appeal from the August 4, 2021, (reference 02) unemployment insurance decision that denied benefits as April 18, 2021. The parties were properly notified about the hearing. A telephone hearing was held on September 15, 2021. Ms. Gonzalez participated and testified. The employer did not register for the hearing and did not participate. The administrative law judge took official notice of the administrative record. Claimant's Exhibit A was admitted into evidence.

ISSUE:

Is Ms. Gonzalez able to and available for work?
Is Ms. Gonzalez on a leave of absence?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Ms. Gonzalez began working for the employer on August 2011. She worked as full-time packer.

Ms. Gonzalez's right arm was injured on the job on June 5, 2019. She went on Family Medical Leave Act (FMLA) leave and saw a doctor through the employer. Ms. Gonzalez had surgery on August 19, 2020. In late September 2020, Ms. Gonzalez's doctor released her to return with restrictions prohibiting her from doing repetitive actions and from lifting more than five pounds. The employer told Ms. Gonzalez that they did not have work available for her with her restrictions. Ms. Gonzalez asked for an FMLA extension. The employer denied her request, but the employer allowed her to take an extended leave of absence for health reasons.

On February 26, 2021, Ms. Gonzalez and the employer signed a Settlement Memorandum. Claimant's Exhibit A. The employer agreed to pay Ms. Gonzalez \$35,000 for medical and other expenses. The employer also agreed to not contest Ms. Gonzalez's claim for unemployment. The parties agreed that Ms. Gonzalez's employment was terminated and that she would not reapply for employment with the employer.

Prior to working for the employer, Ms. Gonzalez worked as a cleaner cleaning offices and cinemas. She performed this work for about three years. Ms. Gonzalez has applied for service jobs since she was separated from employment with this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Ms. Gonzalez is not on a leave of absence as of April 18, 2021, and she is able to 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. 871-24.22(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. 871-24.22(2) provides:

Benefit 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) 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.

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. A person claiming benefits has the burden of proof that she is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

In this case, Ms. Gonzalez was not on a leave of absence as of April 18, 2021 since she was not longer employer by the employer by the date. Ms. Gonzalez is able to and available for work as of April 18, 2021. Her doctor has released her to return to work. Although she has some restrictions from her doctor, she is able to work in some gainful employment, which is engaged in by others as a means of livelihood. Since Ms. Gonzales is able to and available for work, benefits are allowed, provided she is otherwise eligible.

DECISION:

The August 4, 2021, (reference 02) unemployment insurance decision is reversed. Ms. Gonzalez is available for work as of April 18, 2021. Benefits are allowed, provided she is otherwise eligible.



Daniel Zeno
Administrative Law Judge
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September 21, 2021
Decision Dated and Mailed

dz/ol