

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALVIN R BELL
Claimant

CITY OF WHITTEMORE
Employer

APPEAL 17R-UI-12428-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/17/17
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Able and Available
Iowa Admin. Code r. 871-24.22(2)j – Benefit Eligibility Conditions – Leave of Absence
Iowa Admin. Code r. 871-24.23(10) – Availability Disqualifications – Leave of Absence

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 6, 2017 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was on an approved leave of absence. The parties were properly notified of the hearing. A telephone hearing was held on December 22, 2017. The claimant, Alvin R. Bell, participated. The employer, City of Whittemore, participated through Linda Farrell, City Clerk.

ISSUE:

Is the claimant able to work and available for work effective September 17, 2017?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant is employed part time by the City of Whittemore. On August 1, 2017, claimant fell at home and broke his shoulder and arm. Claimant has been on a leave of absence from his position since that time. He recently obtained a release medically clearing him to return to work. Claimant has not yet returned to the employer with the release and asked to end his leave of absence. During claimant's absence, the City of Whittemore hired a third full-time employee in his department. However, claimant's as-needed part-time position still exists.

REASONING AND CONCLUSIONS OF LAW:

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

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(2)(1), (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.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

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.

The claimant requested and was given a leave of absence beginning on or around August 1, 2017. Accordingly, benefits are denied. If claimant returns to the employer and there is no position available for him, he should contact Iowa Workforce Development as he will have separated from employment at that time.

DECISION:

The October 6, 2017 (reference 01) unemployment insurance decision is affirmed. Claimant is not able to work and available for work effective September 17, 2017. Benefits are withheld.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/rvs