

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

ZAKIYA D MUHAMMAD
Claimant

APPEAL NO. 23A-UI-00871-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

OC: 12/18/22
Claimant: Appellant (2R)

Iowa Admin. Code 871- 24.23(10) – Leave of Absence
Iowa Code § 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated January 20, 2023 reference 01, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on February 14, 2023. Claimant participated personally. Employer participated by hearing representative Elsie Poucel and witness Brian Jack.

ISSUE:

Whether claimant is able and available for work?

Whether claimant is on an approved leave of absence?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant worked as a full time Account Resolution Specialist II for employer. Claimant's significant other also worked for Wells Fargo. Claimant and her significant other were both splitting working from home and from the office on or around September 7, 2022. On that date, the two parties became involved in an altercation in front of their very young child. Claimant ended up shooting her significant other.

Claimant was placed on paid administrative leave by her employer on September 12, 2022 after employer found out about the incident and further explored the matter. The paid leave was switched by employer to unpaid leave on October 18, 2022. Claimant had no say in being placed on leave, or in having her leave switched to unpaid leave. Claimant stated that she was working another job with UPS from around the time that she was switched to unpaid leave until early December, when she was let go from that job. Then she filed for unemployment benefits.

At all times relevant, claimant remained able and available to return to her job at Wells Fargo if they would have allowed her to do so. Claimant stated that she had multiple discussions with human resources and with security about possibly returning to work, but was not allowed to return.

Employer stated that claimant was not allowed to return out of risk that claimant's victim was an employee at Wells Fargo also. Employer's witness could not say whether claimant's significant other ever returned to work at Wells Fargo.

Claimant was charged with, and eventually pled guilty to domestic abuse assault causing serious injury with a weapon and child endangerment. After claimant pled guilty employer terminated claimant's position.

REASONING AND CONCLUSIONS OF LAW:

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 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.

In this matter, claimant never requested a leave of absence. The Iowa Code defined as leave as a matter that is requested by a claimant and granted by an employer. Here, claimant made

no request for a leave. Employer unilaterally determined that claimant would be placed on leave – at first a paid leave, and then unpaid. This ‘leave’ as titled by employer has the exact effect of a suspension. Whether or not it was in the employer’s best interest to move in this manner is not the question before the judge, the initial question is whether the claimant is on an approved leave of absence. She is not as she never requested to be placed on one.

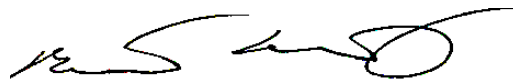
After showing that the claimant never requested to be placed on a leave, the claimant has also proven that she was able and available to work at the time she filed for unemployment benefits. Claimant filed for benefits only after losing a job she held with UPS to fill in while on leave with Wells Fargo. She has demonstrated that she is able and available for work. Benefits shall be allowed effective December 18, 2022 if claimant is otherwise eligible for benefits.

This matter shall be remanded to the fact finder for a determination of whether claimant’s period of time away from work prior to her separation was a disqualifying suspension. Claimant was separated from her job with employer on January 26, 2023. A determination shall be made as to whether this separation was disqualifying for benefits.

DECISION:

The decision of the representative dated January 20, 2023, reference 01 is reversed. Claimant is eligible to receive unemployment insurance benefits, effective December 18, 2022, provided claimant meets all other eligibility requirements. This matter shall be remanded to the fact finder for a determination of whether claimant’s period of time away from work prior to her separation was a disqualifying suspension.

This matter will be remanded to the fact finder for a determination of the separation issue as claimant was permanently separated from her employment on January 26, 2023.



Blair Bennett | Administrative Law Judge II
Iowa Department of Inspections & Appeals

February 16, 2023
Decision Dated and Mailed

bab/scn

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday. *There is no filing fee to file an appeal with the Employment Appeal Board.*

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may file a petition for judicial review in district court.

2. If you do not file an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at www.iowacourts.gov/efile. *There may be a filing fee to file the petition in District Court.*

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal. *No hay tarifa de presentación para presentar una apelación ante la Junta de Apelación de Empleo.*

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si no presenta una apelación de la decisión del juez ante la Junta de Apelación de Empleo dentro de los quince (15) días, la decisión se convierte en una acción final de la agencia y tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días. Puede encontrar información adicional sobre cómo presentar una petición en www.iowacourts.gov/efile. *Puede haber una tarifa de presentación para presentar la petición en el Tribunal de Distrito.*

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.