

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**EDWARD A LOWE**  
Claimant

**ROSE ACRE FARMS**  
Employer

**APPEAL 19A-UI-06652-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/14/19  
Claimant: Appellant (2)**

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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:**

The claimant/appellant filed an appeal from the August 15, 2019 (reference 03) unemployment insurance decision that found claimant was not eligible for unemployment benefits because he was voluntarily unemployed and not available for work due to a leave of absence. The parties were properly notified of the hearing. A telephone hearing was held on September 16, 2019. The claimant, Edward A. Lowe, participated personally and was represented by Jon S. Geyer. The employer, Rose Acre Farms, did not participate. Claimant's Exhibits A and B were admitted.

**ISSUES:**

Is the claimant able to work and available for work effective July 14, 2019?  
Is the claimant voluntarily unemployed due to a requested 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 for this employer as a packer. His job duties require him to pack eggs in boxes and carry boxes. He typically worked more than 40 hours per week. On June 11, 2019, claimant stepped down and twisted his left knee while at work. He went to the doctor and had a MRI conducted. He was diagnosed with a torn meniscus.

Claimant was given a medical restriction to work on light duty. See Exhibit A. He gave the doctor restrictions to his supervisor, who told him to just continue at his normal job. Claimant tried working his normal job but the long-time standing made his knee hurt. Claimant was unable to stand for a long period of time. He asked his supervisor if there were any other jobs available and claimant was told he had to leave work and return only once he was fully recovered. Claimant never requested a leave of absence. Claimant has filed a worker's compensation claim. The status of the claim is unknown.

Claimant was told that the torn meniscus requires surgery. Claimant is not scheduled for surgery or any follow up appointments with his doctor. Claimant believes that he can perform a job driving a vehicle or a fork lift on a full-time basis. Claimant has worked in a warehouse in the past.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes as follows:

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 § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

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.

(emphasis added).

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.

(emphasis added).

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.

Iowa Admin. Code r. 24.22(2) provides:

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.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

(emphasis added).

The standard of being able to and available for work is independent of whether the injury is work-related or not. See *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991)(finding harmless error in applying the voluntary quit standards). The burden is on the claimant to establish that he is able and available for work within the meaning of the statute. Iowa Code § 96.6(2); Iowa Admin. Code r. 871-24.22.

The credible evidence establishes that the claimant never requested a voluntary leave of absence and is not voluntarily unemployed. Further, claimant has established that he is able to and available to work in some reasonably suitable, comparable, gainful, full-time employment, which is generally available in the labor market in which he resides, even given his medical restrictions. As such, benefits are allowed effective July 14, 2019, provided the claimant is otherwise eligible.

**DECISION:**

The August 15, 2019 (reference 03) unemployment insurance decision is reversed. The claimant did not request a leave of absence and is able to and available for full-time work effective July 14, 2019. Benefits are allowed, provided the claimant is otherwise eligible.

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Dawn Boucher  
Administrative Law Judge

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Decision Dated and Mailed

db/rvs