

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALBERTO ZAPATA
Claimant

TYSON FRESH MEATS INC
Employer

APPEAL 21A-UI-00954-DZ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/16/20
Claimant: Appellant (4)

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.19(38) – Total and Partial Unemployment
Iowa Admin. Code r. 871-24.23(10) – Leave of Absence
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

Alberto Zapata, the claimant/appellant, filed an appeal from the November 23, 2020, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on February 12, 2021. Mr. Zapata participated and testified. The employer participated through Kris Rossiter. Claimant's Exhibits A and B were admitted.

ISSUES:

Is Mr. Zapata able to and available for work?
Is Mr. Zapata on a voluntary leave of absence?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Zapata began working for employer on January 19, 2016. He works as a full-time refrigeration maintenance person on the night shift.

In March 2020, the United States declared a public health emergency because of the COVID-19 pandemic. On May 5, 2020, Mr. Zapata requested and was granted vacation leave for August 10 through August 14. Claimant's Exhibit A. Mr. Zapata took vacation leave August 10 through August 14. His vacation was outside the United States of America.

Mr. Zapata returned to work the night of August 17. A supervisor directed Mr. Zapata to talk with human resources staff the morning of August 18 because he had been out of the country and the supervisor believed that Mr. Zapata would have to self-quarantine due to the pandemic. Mr. Zapata talked with human resources staff who told him that he must self-quarantine due to public health guidelines regarding the pandemic. Mr. Zapata asked the employer if he would be paid during his self-quarantine. The employer told him he would not. That same day, the employer informed all employees that if they travel outside of the United States they must inform

their supervisor or human resources staff before leaving and call after their return but before returning to work. Claimant's Exhibit B.

Mr. Zapata self-quarantined from August 18 through August 30. He returned to work on August 31.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, this administrative law judge concludes that Mr. Zapata is temporarily unemployed from August 18, 2020 through August 30, 2020.

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 Code § 96.19(38) provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

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 96.7(2)a(2)(a) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

Mr. Zapata is temporarily unemployed. Mr. Zapata was unemployed from his full-time job from August 18, 2020 through August 30, 2020 due to the COVID-19 public health emergency and he returned to his full-time job at his same wages and hours on August 31, 2020. Mr. Zapata has no other base-period wages. Partial benefits are allowed as long as he is otherwise eligible.

Although the employer was not offering Mr. Zapata the same employment at the time he was receiving benefits as in the base period contemplated at hire, no benefit charges shall be made to its account. This aligns with the Department's position to not charge employers for claims made by employees due to COVID-19 related unemployment.

DECISION:

The November 23, 2020, (reference 01) unemployment insurance decision is modified in favor of the appellant, Mr. Zapata. Mr. Zapata was partially unemployed from August 18, 2020 through August 30, 2020. Benefits are allowed, provided he is otherwise eligible. No charges shall be made to the employer's account.



Daniel Zeno
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

February 23, 2021
Decision Dated and Mailed

dz/scn