

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOHN A WILSON
Claimant

TMONE LLC
Employer

APPEAL 18A-UI-11818-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/18/18
Claimant: Appellant (2R)

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 December 3, 2018 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was on an approved leave of absence and therefore was not available for work. The parties were properly notified of the hearing. A telephonic hearing was held on December 27, 2018. The claimant, John Wilson, participated. The employer, TMONE, L.L.C., registered a participant but did not answer when called at the hearing time and did not participate in the hearing.

ISSUES:

Was claimant on an approved leave of absence?
Is claimant able to work, available for work, and actively and earnestly seeking work effective November 18, 2018?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time, most recently as an agent, from September 24, 2018, until November 6, 2018, when he separated from employment. Claimant denies he is on a leave of absence, and he denies that anyone mentioned a leave of absence to him during the separation.

Claimant is physically able to work currently. He is available for work, and he has been looking for customer service or food service employment. Claimant is currently working a part-time job on the weekends while he searches for full-time employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is able to work 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(2)j(1) and (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.

...

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.

In this case, there is no evidence that claimant requested a leave of absence or that he discussed a leave of absence with the employer. Claimant has established that he is otherwise able to work, available for work, and actively and earnestly seeking work. Therefore, benefits are allowed, provided claimant is otherwise eligible.

This matter will be remanded for further investigation of whether claimant's separation is disqualifying for benefits.

DECISION:

The December 3, 2018 (reference 01) unemployment insurance decision is reversed. Claimant is able to work and available for work effective November 18, 2018. Benefits are allowed, provided he is otherwise eligible.

REMAND:

The issue of whether claimant's separation from TMONE, L.L.C. is disqualifying is remanded to the Benefits Bureau of Iowa Workforce Development for initial investigation and determination.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/rvs