

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NATHAN J YEAGER
Claimant

JOHN DEERE CEC - DUBUQUE WORKS
Employer

APPEAL 16A-UI-09303-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 07/24/16
Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(26) – Same Hours and Wages

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 18, 2016, (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 13, 2016. Claimant participated. Employer participated through labor relations employee Ryan Moode.

ISSUES:

Is the claimant able to and available for work?

Is the claimant still employed at same hours and wages?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began his employment with the employer on February 23, 2004. The employer placed claimant on temporary layoff on July 17, 2016, which ended on July 24, 2016. Claimant was then on vacation for the next two weeks. Claimant received vacation pay for this two-week vacation. Claimant then returned to work at the same hours and wages on August 8, 2016. The temporary layoff was not a disciplinary layoff.

REASONING AND CONCLUSIONS OF LAW:

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

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(23) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

An individual claiming benefits must be able to work, available for work, and actively and earnestly seeking work. Claimant has been employed with the employer since February 23, 2004. Claimant was placed on temporary layoff for one week beginning July 17, 2016. Claimant then was on vacation and received vacation pay for the weeks beginning July 24,

2016 and July 31, 2016. Claimant returned to work at the same hours and wages on August 8, 2016. Because claimant was on vacation for the weeks beginning July 24, 2016 and July 31, 2016, received vacation pay for those weeks, and returned to work on August 8, 2016 at the same hours and wages, he is currently employed and is not considered available for work as of July 24, 2016. Accordingly, benefits are denied as of July 24, 2016.

DECISION:

The August 18, 2016, (reference 02) unemployment insurance decision is affirmed. Claimant is not available for work effective July 24, 2016. Benefits are denied.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/pjs