

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOHN G PEDERSON
Claimant

“NPC INTERNATIONAL INC
Employer

APPEAL 21A-UI-12902-AR-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/24/21
Claimant: Appellant (2)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871—24.23(10) – Leave of Absence

STATEMENT OF THE CASE:

On May 26, 2021, claimant, John G. Pederson, filed an appeal from the May 17, 2021, reference 01, unemployment insurance decision that denied benefits based upon the determination that claimant was on an approved leave of absence from employment at the employer, NPC International, Inc., effective January 24, 2021. The parties were properly notified about the hearing held by telephone on July 15, 2021. The claimant participated personally. The employer did not participate.

ISSUES:

Effective the week ending January 31, 2021, was the claimant able to and available for work?
Effective the week ending January 31, 2021, was the claimant on a voluntary leave of absence?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began his employment as a full-time delivery worker with the employer in May 2019. Claimant still works for the employer.

Claimant worked January 25, 2021. That day, claimant’s fiancée, with whom he lives, began feeling ill. She took a COVID-19 test, which returned a positive result the following day. On January 26, 2021, claimant spoke to his supervisor, General Manager Tiffany Shellhorn, who spoke to District Manager Charlie. Shellhorn texted claimant the same day, informing him that, according to the employer’s COVID-19 policy, claimant was not to be at work until February 16, 2021, unless he got a negative COVID-19 test after February 13, 2021. Claimant was never ill and would have continued working had the employer allowed him to do so. He was not paid for his time off. He returned to work on February 16, 2021, and resumed his normal schedule and wages.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was able to and available for work. Benefits are allowed, provided claimant is otherwise eligible.

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—24.23(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.

Claimant was on a mandatory leave of absence during the weeks of January 31, 2021, through February 14, 2021, and he worked a partial week during the week of February 21, 2021. Claimant did not request a leave of absence during these weeks; he would have preferred to continue working. However, due to the pandemic and the risk of exposing coworkers to COVID-19, the employer required claimant to be out of work. Because it was the employer's choice that claimant was placed on a leave of absence and not claimant's choice, the administrative law judge finds that claimant was not on a voluntary leave of absence. Claimant was otherwise able to and available for work. Benefits are allowed, provided he is otherwise eligible.

DECISION:

The May 17, 2021 (reference 01) unemployment insurance decision is reversed. Claimant was able to work and available for work effective January 31, 2020. Benefits are allowed, provided he is otherwise eligible.



Alexis D. Rowe
Administrative Law Judge

July 26, 2021
Decision Dated and Mailed

ar/mh