

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SCOTT A ROE
Claimant

APEX SYSTEMS LLC
Employer

APPEAL 21A-UI-09228-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 02/21/21
Claimant: Appellant (4-R)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions
Iowa Admin. Code r. 871-24.23(10) – Able & Available – Leave of Absence

STATEMENT OF THE CASE:

On April 1, 2021, Scott A. Roe (claimant) filed an appeal from the March 29, 2021, reference 03, unemployment insurance decision that denied benefits effective February 21, 2021, based upon the determination he was on an approved leave of absence and was not able to and available for work. After due notice was issued, a telephone hearing was held on June 16, 2021. The claimant participated personally. The employer participated through Charmaine Lively, Employee Services. No exhibits were offered into the record.

ISSUE:

Was the claimant able to work, available for work, and actively and earnestly seeking work effective February 21, 2021?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began working for the employer on November 5, 2020, as a temporary full-time Field Technician. The job required him to provide his own transportation to and from work sites.

The claimant filed his claim for benefits effective February 21, 2021, but did not file any weekly claims. The claimant reactivated his claim for benefits effective March 21 and filed weekly claims for the three weeks ending April 10.

On March 19, 2021, the claimant notified the employer that he would not be able to work for two weeks because his vehicle needed to be repaired. The employer granted the claimant the time off. The claimant's vehicle was repaired in the two weeks. However, he did not return to work.

Whether the claimant's separation qualifies him for benefits has not adjudicated by the Benefits Bureau.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not able to work and available for work from March 21 through April 3, 2021. Benefits are denied. The claimant was able to and available for work effective April 4, 2021. Benefits are allowed, provided he is otherwise eligible.

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 provides, in relevant part:

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 provides, in relevant part:

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

(4) If the means of transportation by an individual was lost from the individual's residence to the area of the individual's usual employment, the individual will be deemed not to have met the availability requirements of the law. However, an individual shall not be disqualified for restricting employability to the area of usual employment. See subrule 24.24(7).

(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.

An individual claiming benefits has the burden to prove that he is able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. The claimant did not have transportation and requested time off for two weeks to have his vehicle repaired. Accordingly, he is not eligible for unemployment insurance benefits from March 21 through April 3, 2021.

The claimant has established that he was able to and available for work effective April 4, 2021. Benefits are allowed, provided he is otherwise eligible. Whether the claimant's separation qualifies him for benefits is remanded to the Benefits Bureau for review and processing.

DECISION:

The March 29, 2021, reference 03, unemployment insurance decision is modified in favor of the appellant. The claimant was not able to work and available for work March 21 through April 3, 2021. Benefits are denied. The claimant is able to and available effective April 4, 2021. Benefits are allowed, provided he is otherwise eligible.

REMAND:

Whether the claimant's separation qualifies him for benefits is remanded to the Benefits Bureau for review and processing.



Stephanie R. Callahan
Administrative Law Judge

June 30, 2021
Decision Dated and Mailed

src/lj