

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARIA G NIETO MENENDEZ
Claimant

APPEAL 19A-UI-07299-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SMITHFIELD FRESH MEATS CORP
Employer

OC: 08/11/19
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/appellant filed an appeal from the September 16, 2019, (reference 02) unemployment insurance decision that denied benefits because the claimant was on an approved leave of absence. The parties were properly notified about the hearing. A telephone hearing was held on October 7, 2019. The hearing was held together with Appeal 19A-UI-07300-JC-T and 19A-UI-06896-JC-T. The claimant participated personally and with the assistance of a Spanish interpreter (Laura, #10870) from CTS Language Link. The employer did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing.

The administrative law judge took official notice of the administrative records including the fact-finding documents. Claimant Exhibits 1-4 were admitted into evidence. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant requested and was approved for a leave of absence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant has performed work as laborer/in production for this employer since 2009. She last performed work for Smithfield Fresh Meats Corporation on July 24, 2019. The claimant incurred a work related injury in 2010 and was placed on permanent medical restrictions (Claimant Exhibit 3). She also incurred a second injury to her knee in 2018. The employer accommodated the claimant's restrictions for a period of time. She then went to the doctor on July 18, 2019 in response to knee pain.

When she presented restrictions to her employer, it would not accommodate her and told her she was laid off because she couldn't do the work. The claimant did not request a leave of

absence and is willing to perform work within her restrictions. She has not performed work in over two months and checks in with the employer every week, who continues to offer her work outside of her restrictions.

The claimant's restrictions include taking a five minute break each hour during work to perform stretches for her knee, no repetitive use of arms, high speed assembly and no lifting greater than ten pounds.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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 § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 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.

(emphasis added).

Iowa Admin. Code r. 871-24.22(1)a 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.

(1) *Able to work.* An individual must be physically and mentally **able to work in some gainful employment, not necessarily in the individual's customary occupation**, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

(emphasis added).

To be able to work, "[a]n individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871-24.22(1). "An evaluation of an individual's ability to work for the purposes of determining that individual's eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides." *Sierra* at 723.

Iowa Admin. Code r. 24.22(2) provides:

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.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

(emphasis added).

The standard of being able to and available for work is independent of whether the injury is work-related or not. See *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991)(finding harmless error in applying the voluntary quit standards). The burden is on the claimant to establish that he is able and available for work within the meaning of the statute. Iowa Code § 96.6(2); Iowa Admin. Code r. 871-24.22.

The credible evidence establishes that the claimant never requested a voluntary leave of absence and is not voluntarily unemployed. Further, claimant has established that she is able to and available to work in some reasonably suitable, comparable, gainful, full-time employment, which is generally available in the labor market in which she resides, even given her medical restrictions. As such, benefits are allowed, provided the claimant is otherwise eligible.

REMAND: The issues of whether the claimant has permanently separated from employment and whether her group code should change to reflect permanent separation and required job search contacts are remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

DECISION:

The September 16, 2019 (reference 02) unemployment insurance decision is reversed. The claimant did not request a leave of absence and is able to and available for full-time work effective August 11, 2019. Benefits are allowed, provided the claimant is otherwise eligible.

REMAND: The issues of whether the claimant has permanently separated from employment and whether her group code should change to reflect permanent separation and required job search contacts are remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn