

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SERGE LUSILAWO MAFUTA
Claimant

SEATON LLC
Employer

APPEAL 17R-UI-04243-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/18/16
Claimant: Appellant (1R)

Iowa Code § 96.4(3) – Ability to and Availability for Work
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 February 13, 2017 (reference 03) unemployment insurance decision that denied benefits based upon claimant being on a voluntary leave of absence. The parties were properly notified of the hearing. A telephone hearing was held on May 10, 2017. The claimant, Serge Lusilawo Mafuta, participated personally. The employer, Seaton LLC, participated through witness Susan Murphy.

ISSUES:

Is the claimant able to and available for work?
Is claimant on an approved leave of absence?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant was employed full-time as a temporary employee. His last work assignment was at Proctor and Gamble where he was a production worker. He began his employment on March 23, 2015. His last day physically worked on the job was March 23, 2017.

On January 23, 2017 claimant had a doctor appointment where he was prescribed medication. He spoke with Alex Warmer, the staff supervisor, and reported that he was unable to work because the medication made him dizzy.

Mr. Warmer gave the claimant a fitness for duty form which required that the claimant and his physician review his assigned job duties and advise whether claimant could return to work and whether claimant was given any restrictions. Claimant spent several weeks trying to make arrangements with his physician to review and complete the fitness for duty form. Claimant eventually returned the fitness for duty form to the employer on February 22, 2017 and was scheduled to work for the next available shift.

Claimant testified that he is no longer employed with the employer. There has been no initial investigation and determination regarding claimant's separation from this employer. The question of whether the claimant is separated from employment will be remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

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. 871-24.22(2)j(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(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 requested a leave of absence from work due to him not being able to work as he was suffering from dizziness. Claimant was required to submit a fitness for duty form prior to returning to work in order to certify that he was able to complete his assigned job duties. The delay in returning the fitness for duty form was not due to any actions of the employer. Claimant was immediately returned to work once the fitness for duty form was provided to the employer. Because claimant requested and was granted a leave of absence, the period between January 29, 2017 and February 28, 2017 is deemed a period of voluntary unemployment. As such, benefits are denied.

DECISION:

The February 13, 2017 (reference 03) decision is affirmed. The claimant requested and was granted a voluntary leave of absence, which is considered a period of voluntary unemployment. Benefits are denied between January 29, 2017 and February 28, 2017.

REMAND: The separation issue delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs