

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHARLES T MCBREEN
Claimant

NCS PEARSON INC
Employer

APPEAL 21A-UI-18939-AR-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 06/20/21
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant, Charles T. McBreen, filed an appeal from the August 25, 2021, (reference 01) unemployment insurance decision that denied benefits based upon the determination that claimant was on a leave of absence from employment with the employer, NCS Pearson, Inc., effective June 20, 2021. The parties were properly notified of the hearing. A telephone hearing was held on October 18, 2021. The claimant participated personally, with witness Kirk Hoepfner. The employer did not respond to the hearing notice and did not participate. The administrative law judge took official notice of the administrative record.

ISSUES:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began employment as a machine operator on February 26, 2011. He remains employed in that role as of the date of his hearing. He reports to Hoepfner.

The employer is engaged in academic testing-related work, which is seasonal by nature. Each year in June, the employer furloughs its employees for the summer. Claimant last worked before the summer furlough on June 18, 2021. The employer does not have work available to claimant during the summer period. There were two weeks in which the employer notified claimant that it did have work available, and claimant worked for those two weeks. He properly reported wages earned during those two weeks. He returned to work in September 2021. There was no other reason claimant was not able to and available for work during this period. He did not request a leave of absence.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was able to work and available for work for the period in question.

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) 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.

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 still connected to his employer, and did not request a leave of absence as of June 20, 2021. Instead, the employer initiated a furlough during which claimant was available for

work when offered. During two weeks, claimant was offered, and accepted, work from the employer. There was no other reason that claimant was not working during this period of time. Claimant was not on a leave of absence, and was otherwise able to and available for work throughout the period in question.

DECISION:

The August 25, 2021, (reference 01) unemployment insurance decision is reversed. The claimant is able to work and available for work effective June 20, 2021. Benefits are allowed, provided he is otherwise eligible.



Alexis D. Rowe
Administrative Law Judge

October 22, 2021
Decision Dated and Mailed

ar/kmj