

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROBERT R SONDERBERG
Claimant

RJK INC
Employer

APPEAL 21A-UI-04522-S2-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/13/20
Claimant: Appellant (1R)

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

STATEMENT OF THE CASE:

On January 24, 2021, Robert R. Sonderberg (claimant) filed an appeal from the January 21, 2021, reference 01, unemployment insurance decision that denied benefits based upon the determination he was not able to and available for work. After due notice was issued, a telephone hearing was held on April 8, 2021. Claimant participated personally. RJK, Inc. (employer) participated through account manager Heather Franklin. Claimant's Exhibit A was received.

ISSUE:

Was the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant has been employed full-time as a maintenance worker by employer since August 27, 2009.

On December 1, 2020, claimant developed COVID-19 like symptoms. Employer required that claimant remain off work from December 2, 2020, through December 12, 2020 per its policy. Employer required claimant to quarantine even though he had not tested positive for COVID. Claimant did not receive any vacation or wages during the time he was off of work. Claimant wanted to work during this time and returned to work on December 14, 2020. Claimant filed his claim for unemployment insurance benefits with an effective date of December 13, 2020, after the time period during which he was off work.

REASONING AND CONCLUSIONS OF LAW:

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

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". [Emphasis added.]

Iowa Code section 96.19(38)c provides:

Definitions.

38. Total and partial unemployment

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

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.

(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.

In this case, claimant was fully employed after the effective date of the claim on December 13, 2020. Claimant was temporarily unemployed for the two-week period ending December 12, 2020, and is eligible for benefits those weeks, provided the claim is backdated.

The administrative law judge does not have the legal authority to backdate the claim. Since the pandemic began, the Benefits Bureau has backdated claims in limited circumstances. Therefore, the administrative law judge will remand this matter to the Benefits Bureau for a determination on whether this is such a case and whether benefits can be released for the two weeks ending December 12, 2020.

DECISION:

The January 21, 2021, (reference 01) unemployment insurance decision is affirmed. The claimant is not able to work and available for work effective December 13, 2020.

REMAND:

This matter is remanded to the Benefits Bureau of Iowa Workforce Development for consideration of whether the claim can be backdated to November 29, 2020, and if so, for the Benefits Bureau to then release payment for the two weeks ending December 12, 2020, when claimant was temporarily unemployed and did not receive any vacation or other wages.



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April 14, 2021
Decision Dated and Mailed

sa/ol