

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LEE A CONGER
Claimant

AGRI-INDUSTRIAL PLASTICS CO
Employer

APPEAL NO. 20A-UI-09331-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/03/20
Claimant: Appellant (2)

Iowa Admin. Code ch. 871 r. 24.23(10) – Leave of Absence
Iowa Code § 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated July 27, 2020 reference 01, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on September 22, 2020. Claimant participated personally. Employer did not participate.

ISSUES:

Whether claimant is able and available for work?

Whether claimant is on an approved leave of absence?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant works for employer as a full time maintenance technician working steady hours.

On April 20, 2020 claimant had his doctor send employer a note excusing claimant from work for 10 days as a precaution against Covid as claimant is in a high risk category. Claimant was scheduled to return to work on May 4, 2020 and claimant's doctor sent another note to employer allowing him to return without restrictions.

Upon receiving this second note from the doctor, employer called claimant and asked what had changed that prompted the doctor to write a new note. Claimant stated that he could not afford to be off from work, and he couldn't stay away because he might possibly contract some disease. Employer told claimant that they did not wish him to return to work, although claimant was able and available to return. Employer requested that claimant instead go on unemployment until the situation had become more safe.

Employer contacted claimant on June 16, 2020 and requested that claimant return to work. Claimant did so.

REASONING AND CONCLUSIONS OF LAW:

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.

Iowa Code section 96.4(3) provides:

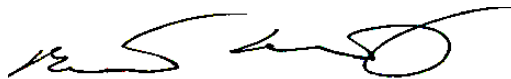
An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

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".

In this matter, claimant remained able and available to work from May 4, 2020 onward. Any time claimant was off from work after that date was not as a result of a leave of absence, but rather was a layoff by the employer. Benefits are allowed from May 4, 2020.

DECISION:

The decision of the representative dated July 27, 2020, reference 01 is reversed. Claimant is eligible to receive unemployment insurance benefits, effective May 4, 2020, provided claimant meets all other eligibility requirements.



Blair A. Bennett
Administrative Law Judge

September 24, 2020
Decision Dated and Mailed

bab/scn