

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

PAT CLAY

Claimant

APPEAL 20A-UI-07644-HP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DE MARANVILLE INSTALLATIONS INC

Employer

OC: 03/29/20

Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work

Iowa Code § 96.5(1) – Voluntary Quitting

Iowa Code § 96.5(2)a – Discharge for Misconduct

Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Claimant Pat Clay filed an appeal from a June 24, 2020 (reference 01) unemployment insurance decision that denied benefits based on him voluntarily quitting work without good cause attributable to the employer, De Maranville Installations Inc. (“De Maranville Installations”). Notices of hearing were mailed to the parties’ last known addresses of record for a telephone hearing scheduled for August 11, 2020, at 9:00 a.m. Clay appeared and testified. Stephanie and Brian De Maranville appeared and testified on behalf of De Maranville Installations. I took administrative notice of the claimant’s unemployment insurance benefits records maintained by Iowa Workforce Development. During the hearing the parties agreed the issue of ability to and availability for work could be added as an issue for hearing.

ISSUES:

Was the appeal timely.

Is the claimant able to and available for work?

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause?

FINDINGS OF FACT:

Clay commenced full-time employment as an inspector with De Maranville Installations on November 14, 2015. In 2019 he was promoted to superintendent. Brian De Maranville was his immediate supervisor.

Clay has been diagnosed with neuropathy, deep vein thrombosis, and leg ulcers. On March 23, 2020, Clay attended an appointment with his internist, Dr. Alan Jensen. Dr. Jensen restricted Clay from working. During an appointment on April 23, 2020, Dr. Jensen again restricted Clay from working until he undergoes surgery in September 2020.

Clay testified on March 31, 2020, he requested a leave of absence due to Dr. Jensen restricting him from working. Brian and Stephanie De Maranville deny Clay requested a leave of absence.

Clay testified he has been restricted from working since March 23, 2020, and at the time of the hearing he continued to be restricted from working due to Covid-19.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6(2) requires the appealing party to timely file an appeal ten days from the mailing date of a decision, or the decision will become final. The ten calendar days for appeal begins running on the mailing date. I find Clay had good cause for failing to timely file an appeal of the decision, reference 01.

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 section 96.19, subsection 38, paragraph "b", subparagraph (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".

871 Iowa Administrative Code 24.22(1)-(3) provides:

Benefit 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.

24.22(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.

b. Interpretation of ability to work. The law provides that an individual must be able to work to be eligible for benefits. This means that the individual must be physically able to work, not necessarily in the individual's customary occupation, but able to work in some reasonably suitable, comparable, gainful, full-time endeavor, other than self-employment, which is generally available in the labor market in which the individual resides.

24.22(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.

24.22(3) Earnestly and actively seeking work. Mere registration at a workforce development center does not establish that the individual is earnestly and actively seeking work. It is essential that the individual personally and diligently search for work. It is difficult to establish definite criteria for defining the words earnestly and actively. Much depends on the estimate of the employment opportunities in the area. The number of employer contacts which might be appropriate in an area of limited opportunity might be totally unacceptable in other areas. When employment opportunities are high an individual may be expected to make more than the usual number of contacts. Unreasonable limitations by an individual as to salary, hours or conditions of work can indicate that the individual is not earnestly seeking work. The department expects each individual claiming benefits to conduct themselves as would any normal, prudent individual who is out of work.

871 Iowa Administrative Code 24.23 (1), (35), and

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

24.23(1) An individual who is ill and presently not able to perform work due to illness. . . .

24.23(6) If an individual has a medical report on file submitted by a physician, stating such individual is not presently able to work. . . .

24.23(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

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. Emp't Appeal Bd.*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); 871 IAC 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. The court in *Gilmore v. Emp't Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that "[i]nsofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

Dr. Jensen restricted Clay from working on March 23, 2020, due to his increased risk of complications from Covid-19. Clay was restricted from working at the time of his separation from employment and continued to be restricted from working at the time of the hearing. I find Clay is not able and available for work, and that benefits must be denied.

Pandemic Unemployment Assistance (“PUA”) Under the Federal CARES Act


Even though the claimant is not eligible for regular unemployment insurance benefits under state law, the claimant may be eligible for federally funded unemployment insurance benefits under the CARES Act. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (“PUA”) that may provide up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive an additional \$600 weekly benefit amount under the Federal Pandemic Unemployment Compensation (“FPUC”) program if the individual is eligible for PUA benefits for the week claimed. The FPUC additional \$600 payment per week ends as of July 25th in Iowa. This means the \$600 weekly additional benefit will stop and at this time, no extension or change to the program has been made by Congress at this time. This does mean that you will see a corresponding decrease in your weekly benefit amount. The FPUC payments are not a state benefit and Iowa is unable to make any changes to the availability of this benefit. If a change takes place to this benefit in the future, IWD will share on the IWD website and social media. This decision does not address whether the claimant is eligible for PUA. If the claimant wishes to receive PUA benefits, the claimant must apply for PUA, as noted in the instructions provided in the “Note to Claimant” below:

Note to Claimant: If this decision determines you are not eligible for regular unemployment insurance benefits and you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (“PUA”). **You will need to apply for PUA to determine your eligibility under the program. Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.** This decision denies benefits. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.

DECISION:

Regular Unemployment Insurance Benefits Under State Law

The June 24, 2020 (reference 01) unemployment insurance decision denying unemployment insurance benefits is affirmed as modified. The claimant was not able to or available for work starting on March 23, 2020. Unemployment insurance benefits are denied until the claimant has worked in and earned wages for insured work equal to ten times the claimant's weekly benefit amount after the claimant's separation date, and provided the claimant is otherwise eligible.



Heather L. Palmer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

August 18, 2020
Decision Dated and Mailed

hlp/mh