

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS  
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

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**TARIQ ESSALAMA**  
Claimant

**BEMIS COMPANY INC**  
Employer

**APPEAL 23A-UI-02450-SN-T  
ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/29/23  
Claimant: Appellant (2)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

**STATEMENT OF THE CASE:**

The claimant, Tariq Essalama, filed an appeal from the March 2, 2023, (reference 01) unemployment insurance decision that denied benefits effective January 29, 2023 based upon the conclusion he requested and was granted a leave of absence. The parties were properly notified of the hearing. A telephone hearing was held on March 23, 2023. The claimant participated. The employer did not participate. Official notice was taken of the agency records.

**ISSUE:**

Whether the claimant was able and available for work effective January 29, 2023?

**FINDINGS OF FACT:**

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

The claimant had worked as a full-time machine operator for Bemis Company Inc.<sup>1</sup> since 2015. The claimant works seven days from 11:00 p.m. to 7:00 a.m. in a row. Then he has two days off. This is followed by an additional seven days on. He has one weekend off per month.

The employer has layoff periods in January due to a slowdown in operations. The employer first asks for volunteers. If the number of volunteers is not enough to meet the drop in capacity, then the employer insists the lowest in seniority take the layoff.

Prior to the week beginning January 29, 2023, the claimant's supervisor informed him that the employer would be laying off three to four employees in his job class. The claimant volunteered because he suspected he would be called for the layoff anyway. The claimant explained that there was only one employee with less seniority than him.

On February 13, 2023, the claimant returned from the layoff. The claimant was able to work while he was on layoff. The claimant was not compensated by the employer or other employers during this two-week period.

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<sup>1</sup> The claimant said as of three years ago the employer goes by the name Amcor Flexibles.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant was able and available for work from the week beginning January 29, 2023 and ending February 11, 2023.

Iowa Code section 96.4(3)a provides:

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

3. a. 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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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. 871-24.23(10) provides:

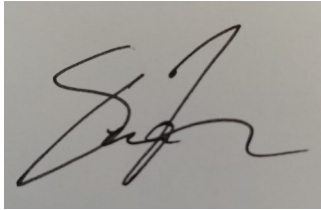
Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(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.

In order to be eligible for benefits, an individual claiming benefits must be able to work, available for work, and actively and earnestly seeking work. The claimant did not request a leave of absence. Rather the employer had a two-week layoff. The claimant was able and available for the period he was on layoff. Accordingly, benefits are granted, provided he is otherwise eligible.

**DECISION:**

The March 2, 2023, (reference 01) unemployment insurance decision is REVERSED. The claimant was able to work and available for work from the week beginning January 29, 2023 and ending February 11, 2023. Benefits are granted, provided he is otherwise eligible for these benefits.

A square box containing a handwritten signature in black ink. The signature is cursive and appears to read 'Sean M. Nelson'.

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Sean M. Nelson  
Administrative Law Judge II  
Iowa Department of Inspections & Appeals  
Administrative Hearings Division – UI Appeals Bureau

April 11, 2023  
Decision Dated and Mailed

smn/scn

**APPEAL RIGHTS.** If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

**AN APPEAL TO THE BOARD SHALL STATE CLEARLY:**

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Note to Parties:** YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

**Note to Claimant:** It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**DERECHOS DE APELACIÓN.** Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board  
4th Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

**UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:**

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Nota para las partes:** USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

**Nota para el reclamante:** es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

**SERVICIO DE INFORMACIÓN:**

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.