

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANDREW P HOWE
Claimant

CHIPOTLE MEXICAN GRILL SERVICE CO
Employer

APPEAL 17A-UI-01197-NM-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/01/17
Claimant: Appellant (2)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2)j – Benefit Eligibility Conditions – Leave of Absence
Iowa Admin. Code r. 871-24.23(10) – Availability Disqualifications – Leave of Absence

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 27, 2017, (reference 01) unemployment insurance decision that denied benefits based upon the finding that he was not able to and available for work after requesting a voluntary leave of absence. The parties were properly notified of the hearing. A telephone hearing was held on February 22, 2017. The claimant Andrew Howe participated and testified. The employer did not participate. Claimant's Exhibit A was received into evidence.

ISSUES:

Is the claimant able to work and available for work effective January 1, 2017?

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 was employed full time as an apprentice general manager from May or June 2014, until the last day he worked on December 24, 2016.

Sometime in early December claimant had a conversation with his Area Manager, Daniel Jones, regarding the future of his employment. Jones told claimant the company was making budget cuts and therefore eliminating the apprentice general manager position at several stores, including claimant's. Jones told claimant he had the option of maintaining his job title and moving to another state to work or taking a demotion. Claimant indicated he would be interested in either option. Jones told claimant he was going to look into what other stores claimant might be able to transfer to and would get back to him within a week.

A few days later claimant was approached by his general manager, Carson Baethke, who told him that Jones had said he wanted claimant terminated. Baethke told claimant he informed Jones he did not think claimant should be terminated, but that they should look at transfer options. Baethke was instructed not to schedule claimant beyond his December 24, 2016 shift and he followed this instruction.

On January 2, 2017, claimant received a notification from the employer stating that a leave of absence request was submitted on his behalf and that he had been approved for unpaid leave. Claimant had not requested anyone submit such a request and did not want to take a leave of absence, but assumed this was the employer's way of keeping him active in the system while looking at transfer options. Claimant did not hear from the employer again until January 24, 2017, when Jones notified him that his employment with the company had been terminated. Claimant testified he was willing, ready, and able to return to work at any time. Claimant also testified there are no restrictions on his ability to or availability for work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not on a voluntary leave of absence, but was involuntarily temporarily laid off due to lack of work and therefore is able to work and available for work.

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 § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(2)(1)(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.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

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.

Here, claimant did not request or consent to the leave of absence. Rather, claimant's supervisor was instructed to take him off the schedule following his December 24, 2016 shift and a request was made on his behalf the following week to be placed on a leave of absence. It appears as though claimant was placed on leave because his position had been eliminated and work in that position was no longer available to him. It also appears the employer placed claimant on a leave of absence while it searched for other employment opportunities for him within the company. Such a leave is not voluntary, as claimant was willing and able to work, but was not placed on the schedule, as his position had been eliminated. Such action is more appropriately classified as a layoff. Since the layoff was due to lack of work, rather than at the request of the claimant, benefits are allowed, provided he is otherwise eligible.

DECISION:

The January 27, 2017, (reference 01) decision is reversed. The claimant was not on a voluntary leave of absence, but was temporarily laid off due to lack of work and is therefore able to work and available for work effective January 1, 2017. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

REMAND:

Information was provided that indicates claimant was separated from employment on January 24, 2017. The issue of claimant's separation is remanded to the Benefits Bureau of Iowa Workforce Development for initial investigation and determination.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

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