

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOE V HOUDEK
Claimant

INFASTECH DECORAH LLC
Employer

APPEAL 21A-UI-08374-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/26/20
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

On March 22, 2021, Joe V. Houdek (claimant) filed an appeal from the March 19, 2021, reference 01, unemployment insurance decision that denied benefits effective September 27, 2020, based upon the determination he was on an approved leave of absence and was not able to and available for work. After due notice was issued, a telephone hearing was held on June 15, 2021. The claimant participated. The employer participated through Alice Bjergum, HR Manager. No exhibits were offered into the record.

ISSUE:

Was the claimant able to work, available for work, and actively and earnestly seeking work effective September 27, 2020?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began working for the employer on March 17, 2003, as a full-time Shipping Clerk. In April 2020, in response to the global pandemic, the employer issued a policy that required any employee who attended a large group function, and was unable to social distance, to quarantine for two weeks before returning to work. The claimant was aware of the policy.

Mid-September, the claimant notified Alice Bjergum, HR Manager, that he would be attending a wedding on September 26. Bjergum reminded him of the mandatory two-week quarantine if he could not social distance and stated they would follow-up after the wedding. On Monday, September 28, the claimant notified Bjergum that it was a large gathering and he attended the reception where he was unable to social distance. The claimant was off for two weeks and returned on October 12.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not able to available for work effective September 27, 2020. Benefits are denied.

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".

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

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.

An individual claiming benefits has the burden to prove that he is able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. The claimant elected to attend a wedding with the understanding that he may be required to take two weeks off under the employer's policy. The parties both consented to the absence, if necessary; therefore, the absence was a leave of absence and the claimant is considered voluntarily unemployed. Benefits are denied.

DECISION:

The March 19, 2021, reference 01, unemployment insurance decision is affirmed. The claimant is not able to work and available for work effective September 27, 2021. Benefits are denied.



Stephanie R. Callahan
Administrative Law Judge

June 28, 2021
Decision Dated and Mailed

src/ol