

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANITA SERRATO DE RODRIGUEZ
Claimant

SWIFT PORK COMPANY
Employer

APPEAL 21A-UI-16372-AW-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 01/10/21
Claimant: Appellant (2)

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:

Claimant filed an appeal from the July 23, 2021 (reference 02) unemployment insurance decision that denied benefits effective January 10, 2021 because claimant was on an approved leave of absence. The parties were properly notified of the hearing. A telephone hearing was held on September 16, 2021 at 10:00 a.m. Claimant participated. Spanish interpretation was provided by Elba (ID # 12018) of CTS Language Link. Employer did not participate. No exhibits were admitted.

ISSUES:

Whether claimant is able to and available for work.
Whether claimant is on an approved leave of absence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began her employment as a full-time Packer with Swift Pork Company on April 10, 2017. With the onset of Covid-19, employer required all employees to wear a face mask at work. Claimant would wear her mask but would lower it when she needed to in order to breathe easier. Employer did not strictly enforce the policy at first. In October 2020 and November 2020, employer issued claimant warnings for not wearing her mask at all times. Claimant had been advised by her doctor not to wear a face mask continuously during the workday due to claimant's underlying pulmonary issue. Claimant provided employer with the note from her doctor and requested an accommodation. In January 2021, employer issued claimant a final warning for not wearing her mask at all times. Employer did not terminate claimant's employment, but placed claimant on a leave of absence. Claimant last performed work for employer on January 10, 2021. Claimant did not request this leave of absence. Claimant had no barriers to employment and could perform her job with a facemask accommodation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes:

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(1), (2) provide:

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.

(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.

(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.

An individual claiming benefits has the burden of proof that she is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

Employers are required to make reasonable accommodations for employees with disabilities under state and federal law. See Iowa Code section 216.6; 42 U.S.C.A. § 12112. An employee who can perform the essential functions of a job with or without a reasonable accommodation is able to work. *Sierra* at 723. Employers are not required to make reasonable accommodations for employees unable to work due to injury.

Claimant did not request a leave of absence. Claimant is physically able to perform her job duties with a reasonable accommodation. Claimant has no other barriers to employment. Claimant has established that she is able to and available for work. Benefits are allowed provided claimant is otherwise eligible.

DECISION:

The July 23, 2021 (reference 02) unemployment insurance decision is reversed. Claimant is able to and available for work. Benefits are allowed provided claimant is otherwise eligible.



Adrienne C. Williamson
Administrative Law Judge
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September 29, 2021
Decision Dated and Mailed

acw/kmj