

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JUSTIN L BRAND
Claimant

ICECAP COLD STORAGE LP
Employer

APPEAL 24A-UI-07153-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 07/07/24
Claimant: Appellant (4)**

Iowa Code § 96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

Justin L. Brand, the claimant/appellant,¹ appealed the Iowa Workforce Development (IWD) July 31, 2024, (reference 01) unemployment insurance (UI) decision. IWD denied Mr. Brand REGULAR (state) UI benefits as of July 7, 2024 because IWD concluded he requested and the employer granted him a leave of absence so he is not available for work. On August 13, 2024, the Iowa Department of Inspections, Appeals, and Licensing (DIAL), UI Appeals Bureau mailed a notice of hearing to Mr. Brand and the employer for a telephone hearing scheduled for August 27, 2024.

The administrative law judge held a telephone hearing on August 27, 2024. Mr. Brand participated personally. The employer did not participate in the hearing. The administrative law judge admitted Department's Exhibit 1 and Claimant's Exhibits A-E as evidence.

The administrative law judge concludes Mr. Brand is eligible for UI benefits from July 7, 2024 through August 3, 2024.

ISSUE:

Is Mr. Brand able to and available for work as of July 7, 2024?
Is Mr. Brand on an approved leave of absence as of July 7, 2024?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Mr. Brand began working for the employer in December 2022. He worked as a full-time safety manager. The last day he worked for the employer was June 10, 2024.

On June 10, the general manager (GM) and a human resources (HR) person gave Mr. Brand an annual review. Mr. Brand asked questions to try to learn how he could improve. The GM told Mr. Brand that he could not answer any of Mr. Brand's questions and he could not talk to Mr. Brand. The HR person then asked Mr. Brand if he wanted a severance package to which Mr. Brand

¹ Claimant is the person who applied for UI benefits. Appellant is the person or employer who appealed.

responded, yes. After the meeting was over, the GM told Mr. Brand to return the employer's property and told Mr. Brand that he was done.

The HR person then told Mr. Brand to submit a request for Family Medical Leave Act (FMLA) leave for the rest of the day. Mr. Brand request FMLA Leave for the rest of the day and the rest of the week with an expected return date of Monday, June 17. The next day, the employer sent Mr. Brand a severance agreement with an end date of June 17. Mr. Brand did not sign the agreement, but his employment ended on June 17.

Mr. Brand applied for REGULAR (state) UI benefits effective July 7. Mr. Brand was ready to work. Mr. Brand obtained new employment as of August 6

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Mr. Brand is able to and available for work from July 7, 2024 through August 3, 2024.

Iowa Code § 96.4(3) provides, in relevant part:

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 96.1A, subsection 37, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, paragraph "c".

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

(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.

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.

A person claiming benefits has the burden of proof that she is be able to work, available for work, and earnestly and actively seeking work.² 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."³ "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."⁴ "[O]nly those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits."⁵

In this case, Mr. Brand has established that is able to and available for work from July 7, 2024 through August 3, 2024. Mr. Brand is eligible for UI benefits for these weeks. Since Mr. Brand began working again as of August 6, he is not able to and available for work starting August 4.

DECISION:

The August 7, 2024 (reference 01) UI decision is MODIFIED IN FAVOR OF THE APPELLANT, MR. BRAND. Mr. Brand is able to and available for work from July 7, 2024 through August 3, 2024. He is eligible for UI benefits for these weeks.



Daniel Zeno
Administrative Law Judge

August 28, 2024
Decision Dated and Mailed

rvs

² Iowa Admin. Code r. 871-24.22.

³ *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871-24.22(1).

⁴ *Sierra* at 723.

⁵ *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004)

APPEAL RIGHTS. If you disagree with this 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
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
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
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
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 adquiera 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.