

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**JORDAN SPENCER**  
Claimant

**TEAM STAFFING SOLUTIONS**  
Employer

**APPEAL 21A-UI-02267-SN-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/05/20**  
**Claimant: Appellant (1R)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22(1) - Able to Work - illness, injury or pregnancy  
Iowa Admin. Code r. 871-24.23(35) - Availability Disqualifications

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the December 16, 2020, (reference 01) unemployment insurance decision that denied benefits based upon her voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on April 13, 2021. Claimant participated and testified. Employer participated through Risk Manager Sarah Fiedler. The administrative law judge took official notice of the agency records. The administrative law judge reviewed the representative's notes at fact-finding.

**ISSUE:**

Whether the claimant was able and available for work effective October 11, 2020?

**FINDINGS OF FACT:**

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

The claimant started working for the employer, Team Staffing Solutions, as a full-time assembler at the site employer, Winegard, on January 8, 2019. His rate of pay was \$11.00. The claimant received \$16.50 per hour for overtime hours.

Winegard does not accommodate non-work related injuries. It does occasionally accommodate employees who have filed workers compensation claims.

On September 17, 2020, one of the claimant's coworkers discovered him in the bathroom at work vomiting into a toilet. The claimant also had blood in his stool that day. The claimant reported these symptoms to Onsite Coordinator Leslie Warner that he was experiencing these symptoms.

On September 29, 2020, the claimant returned to work.

On September 30, 2020, the claimant met with his physician, Dr. Jerry E. Mitchel. On that date, Dr. Mitchell ordered a computerized axial tomography ("CAT") scan on October 5, 2020. The claimant remained away from work in anticipation of the CAT scan.

On October 5, 2020, the claimant had the CAT scan as scheduled.

On October 13, 2020, the claimant returned to work. The claimant left work that same day because he was experiencing too much pain to continue working. He filled out internal Family Medical Leave Act ("FMLA") certification of his own serious health condition paperwork later that day. The employer provided a copy of this paperwork. (Exhibit 2) On the request form, the claimant wrote he was planning on getting a hernia surgery on October 21, 2020 and would be out until December 1, 2020, depending on the discharge instructions from his doctor. This request was accompanied by a note written by the claimant's physician, Ronald Leonard. (Exhibit B)

On October 19, 2020, the claimant filled out FMLA paperwork for the period from October 13, 2020 to November 6, 2020. This paperwork stated the claimant would be restricted from pushing, pulling, bending and carrying for six weeks." The employer provided a copy of this FMLA paperwork. (Exhibit 1)

On December 1, 2020, the claimant was informed by Ms. Warner that he would need a release from his physician to return to work.

On December 14, 2020, the claimant was evaluated by Dr. Mitchell. On that date, Dr. Mitchell wrote a note stating the claimant could return to work on December 21, 2020, as long as his condition did not worsen. (Exhibit C)

On December 15, 2020, fact finding was conducted with both parties. The claimant told the representative at fact finding that he did not know at that point in time if his injury was work-related. However, the claimant said that he had not filed for a worker's compensation claim. The employer was represented by Ms. Fiedler.

On December 21, 2020, the claimant provided a release to return to work without restrictions written by Jerry E. Mitchell. The note instructed the claimant to return to his office for an appointment if symptoms worsened or failed to improve.

For the weeks ending December 25, 2020 and January 1, 2021, the claimant was away from work due to the site employer's holiday downtime.

On January 4, 2021, the claimant informed a supervisor at Winegard, Phay Cam, he would not be able to return to work on January 6, 2021. The claimant stated he would not be able to return until January 14, 2021. The claimant fell on his driveway several times in the preceding week, which re-aggravated his hernia injury.

On January 18, 2021, the claimant returned to work. The claimant worked January 19, 2021 and January 20, 2021.

On January 25, 2021, Account Specialist Michael Westfall received a phone call from the claimant stating that he would not return until further notice. The claimant merely told him that he had fallen.

On January 27, 2021, the claimant informed Mr. Westfall that he would be returning to work on January 28, 2021 or January 29, 2021.

On February 1, 2021, Branch Manager Michael Deere informed the claimant that his assignment was being terminated. In response, the claimant said he was still suffering from a groin injury.

The claimant contends the employer should have given him light duty assignments within his restrictions beginning on December 1, 2020.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant was not able to work and available for work effective October 11, 2020.

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)a 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.

(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(1) (10) and (35) provide:

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

(1) An individual who is ill and presently not able to perform work due to illness.

(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.

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

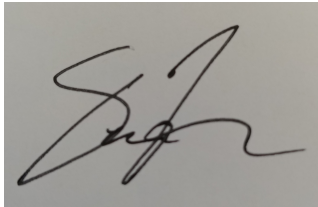
The representative's decision is correct the claimant is not able and available effective October 11, 2020. The claimant is disqualified from benefits either due to requesting and being granted a medical leave of absence, being ill or being subject to restrictions under Iowa Admin. Code r. 871-24.23(1) (10) and (35). The claimant contends the employer should be returned him earlier because it had light duty assignments he could work. The employer is not required to provide these light duty assignments because there is nothing in the record showing it was a work-related injury or even if it was that he reported it to the employer as such. Alternatively, the claimant contends he could have obtained a release to return to work earlier if he had been informed he needed one. The FMLA paperwork the claimant completed mentions he needed a release to return to work. Benefits are denied.

**DECISION:**

The December 16, 2020, (reference 01) unemployment insurance decision is affirmed. The claimant was not able to work and available for work effective October 11, 2020. Benefits are denied.

**REMANDS:**

The issue of whether the claimant's separation from employment on February 3, 2021 qualifies him for benefits is remanded to the Benefits Bureau of IWD for an initial investigation and determination.

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Sean M. Nelson  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515) 725-9067

April 29, 2021  
Decision Dated and Mailed

smn/kmj