

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LINDA WHITEHEAD
Claimant

MARZETTI FROZEN PASTA INC
Employer

APPEAL 19R-UI-10209-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 10/06/19
Claimant: Appellant (2)**

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:

On October 28, 2019, Linda Whitehead (claimant/appellant) filed an appeal from the October 23, 2019 (reference 01) unemployment insurance decision that denied benefits. Specifically, the decision determined claimant was granted a leave of absence and as such was voluntarily unemployed and not available for work. Benefits were denied as of October 6, 2019.

Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for 1:00 p.m. on November 18, 2019. No hearing was held because the claimant failed to provide a telephone number at which she could be reached for the scheduled hearing. On November 25, 2019, a default decision was issued, dismissing claimant's appeal.

On December 9, 2019, claimant appealed to the Employment Appeal Board (EAB). On December 23, 2019, the EAB remanded the matter to the Appeals Bureau for a hearing on the merits.

A telephone hearing was held on January 21, 2020, at 11:00 a.m. The parties were properly notified of the hearing. Claimant participated personally. Marzetti Frozen Pasta Inc. (employer/respondent) participated by HR Manager Joan Tapps.

ISSUE(S):

- I. Is the claimant able to and available for work?
- II. Is the claimant on an approved leave of absence?

FINDINGS OF FACT:

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

Claimant worked for employer as a cleaner and line worker. Claimant's first day of employment was June 1, 1999. The last day claimant worked on the job was January 3, 2019. Claimant separated from employment on November 14, 2019. Claimant was discharged by Tapps on that date.

Beginning January 3, 2019, claimant was on FMLA, short-term disability, and then an approved leave of absence. Beginning in late January 2019, claimant had medical restrictions which prohibited her from lifting more than 20 pounds and from standing more than 15-20 minutes at a time. Claimant's FMLA was exhausted on April 5, 2019 and her short-term disability was exhausted July 11, 2019. Employer then placed her on a medical leave of absence.

Claimant's position included "break room" work three days a week, which consisted of cleaning, making coffee and popcorn, and so on. Claimant was able to do this work within her restrictions. Two days a week she worked on the line, which was generally standing on a cement floor for eight to twelve hours at a time. Claimant was unable to do this work, although there was a line position that was seated that she would have been able to do within her restrictions. Claimant wished to return to work but employer declined to return her to work without a full release from her physician.

Claimant's restrictions remained the same through October 2019, when further medical documentation was provided to employer. Claimant was still restricted from lifting more than 20 pounds and from standing more than 15-20 minutes at a time. Tapps requested claimant provide a date when she could return to work without restrictions. Tapps requested claimant provide this information by November 4, 2019, so that her continued employment could be evaluated. Claimant spoke with her physician, who reiterated that she could return to work immediately with her current restrictions. Claimant's physician would not fully release her to return to work without restrictions. Tapps discharged claimant on November 14, 2019, because claimant did not provide paperwork indicating when she could return to work without restrictions.

Claimant continues to have the same restrictions. She has been searching for cleaning and office work. She has experience cleaning and with some office work, such as assisting with scheduling, making labels, and so on.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work effective July 11, 2019.

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. 871-24.23(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.

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." *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). "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." *Sierra* at 723. The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that "[i]nsofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

Claimant requested and was granted a leave of absence until July 11, 2019, when her FMLA leave and short-term disability benefits were exhausted. At that time, claimant had been released to return to work with restrictions and wished to return to work. However, employer declined to return claimant to work within those restrictions. At that point, claimant's leave of absence was no longer voluntary and she was able and available for work. Claimant has experience cleaning and doing some office work, such as assisting with scheduling, making labels, and so on, and is able to do that kind of work within her restrictions. Claimant is able to and available for work effective July 11, 2019.

Claimant is on notice that she must conduct at least two work searches per week and file weekly claims in order to retain eligibility for benefits.

DECISION:

The October 23, 2019, (reference 01) unemployment insurance decision is REVERSED. The claimant is able to work and available for work effective July 11, 2019. Benefits are allowed, provided she is otherwise eligible.

Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
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Decision Dated and Mailed

abd/scn