

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

BENJAMIN D ANDERSON

Claimant

APPEAL 22A-UI-19349-S2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERICAN TIRE DISTRIBUTORS INC

Employer

OC: 10/23/22

Claimant: Appellant (1R)

Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

On December 2, 2022, the claimant filed an appeal from the November 22, 2022, (reference 01) unemployment insurance decision that denied benefits based on a finding that claimant was on a leave of absence. The parties were properly notified about the hearing. A telephone hearing was held on December 28, 2022. Claimant Benjamin D. Anderson participated. Employer American Tire Distributors did not respond to the hearing notice and did not participate. Claimant's Exhibits A – C were received.

ISSUE:

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on June 24, 2021. Claimant worked for employer as a full-time delivery driver.

In June 2022, claimant suffered a work-related injury to his knee. Employer provided light duty work to claimant as instructed by a medical provider. Claimant swept aisles for approximately one week, but this increased the pain in his knee and caused popping and cracking and he struggled to bear weight. Claimant returned to the doctors who updated his restrictions to no lifting greater than 15 pounds, no bending at the knees, no climbing stairs, and sitting 50% of his workday. Claimant remains under these same work restrictions to date. Employer did not accommodate these restrictions and sent claimant home with instructions to contact employer's third-party benefits administrator.

Claimant requested, and the request was approved by employer's third-party benefits administrator, a leave of absence. (Exhibit A) The leave was approved through October 11, 2022, a default date automatically entered as an end date was not known at the time claimant applied for the leave. On October 8, 2022, employer notified claimant that it ended his employment because employer believed claimant had failed to properly extend his leave. (Exhibit B) Employer later learned this was incorrect information and claimant's leave had been

approved through October 11, 2022. On or around October 21, 2022, employer reinstated claimant to the position of delivery driver with a pay increase and his same work schedule starting at 7:00 a.m. each day.

Claimant informed employer he could not return to work because he could no longer work the hours he previously worked. Effective the first week of October 2022, Claimant removed his child from daycare as it was cost prohibitive since he was no longer working or receiving short-term disability pay. Claimant asked employer about any available sales positions that might accommodate his child's school schedule, but there were none available. Employer considered claimant to have separated from employment on November 8, 2022, due to his inability to work the position due to childcare issues.

The issue of claimant's separation from employment has not been the subject of an investigation and determination by the Benefits Bureau.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work effective October 23, 2022.

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(8) provides:

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

(8) Where availability for work is unduly limited because of not having made adequate arrangements for child care.

An individual claiming benefits has the burden of proof that he is be able to work. For an individual to be eligible to receive benefits, he must be able to work, available for work, and actively seeking work as required by the unemployment insurance law. Iowa Code § 96.4(3). The burden is on the claimant to establish that he is able and available for work within the meaning of the statute. Iowa Code § 96.6(2); Iowa Admin. Code r. 871-24.22.

Here, employer had work available for claimant. Claimant informed the employer he could not work due to a lack of childcare. Claimant was not available for work. Therefore, claimant is not eligible for regular, state-funded unemployment insurance benefits effective October 23, 2022.

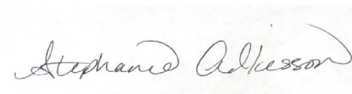
The issue of claimant's separation from employment shall be remanded to the Benefits Bureau for an initial investigation and decision.

DECISION:

The November 22, 2022, (reference 01) unemployment insurance decision is affirmed. The claimant is not available for work effective October 23, 2022, and regular, state-funded unemployment insurance benefits are denied.

REMAND:

The issue of claimant's separation is remanded to the Benefits Bureau for an initial investigation and decision

A handwritten signature in cursive script, reading "Stephanie Adkisson", is written in dark ink on a light-colored background.

Stephanie Adkisson
Administrative Law Judge

January 4, 2023
Decision Dated and Mailed

sa/scn

APPEAL RIGHTS. If you disagree with the 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
4th Floor – Lucas Building
Des Moines, Iowa 50319
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
4th Floor – Lucas Building
Des Moines, Iowa 50319
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 adquiriera 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.