

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MITIKU Y GETISO
Claimant

TYSON FRESH MEATS INC
Employer

APPEAL 21A-UI-19810-CS-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 06/20/21
Claimant: Appellant (2)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(10) – Leave of Absence

STATEMENT OF THE CASE:

On September 7, 2021, the claimant/appellant filed an appeal from the August 31, 2021, (reference 01) unemployment insurance decision that disallowed benefits based on the claimant requesting and granted a leave of absence. The parties were properly notified about the hearing. A telephone hearing was held on October 28, 2021. Claimant was represented by attorney, Mary Hamilton. Claimant participated through CTS Language Link Amharic Interpreter, Kiki (Identification No. 9378). During the hearing the phone system had technical difficulties and a new interpreter was provide for claimant. CTS Language Link Amharic Interpreter, Farhan (Identification No. 12833) provided the remaining translation for the hearing. Employer did not register a number to participate in the hearing prior to the hearing and therefore did not participate in the hearing.

ISSUES:

Is the claimant able to and available for work?

Is the claimant 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 working for employer on January 26, 2015. Claimant last worked as a full-time Janitor. Claimant was separated from employment on June 20, 2021. A determination on claimant's separation has not been made by the Iowa Workforce Development's Benefits Bureau. The issue of claimant's separation was not an issue noticed on the hearing notice and will not be decided by the Administrative Law Judge in this decision.

Claimant originally worked on the employer's plant floor. On April 21, 2020, claimant sustained a work related injury when a co-worker sprayed him with 180 degree water. The water went in the claimant's boot and caused third degree burns. Claimant had to receive multiple skin grafts.

Claimant experienced nerve damage from the work related injury. Claimant was returned to work but was restricted to wear only light shoes that would not irritate his burn wound. The employer accommodated the restriction and transferred claimant to the cafeteria to work as the janitor. Claimant was able to wear shoes that would not cause him pain and would not irritate where he was burned.

Eventually the employer insisted that claimant return to the plant floor to return to his original job. The employer gave claimant a lighter pair of boots to try to prevent claimant from have problems with his injury. Claimant attempted to wear the boots but experienced pain on a daily basis from the boots touching his foot where the injury occurred. Claimant reported his problems to the company nurses. On May 12, 2021, the employer sent claimant to a doctor for an examination on his foot. After the examination claimant was sent home. The employer continued to pay claimant during this time. Claimant did not request a leave of absence. The employer told claimant that they would call him when they had work available to him. A supervisor did call him but the claimant does not speak English. Claimant requested that the supervisor get an interpreter so he could understand what they were saying to him. The claimant was unaware what the phone call was regarding. On June 20, 2021, claimant's benefits were discontinued and he no longer was paid.

Claimant was able to work in the cafeteria during his employment with the employer. Since the separation claimant has been working as a Lyft driver. Claimant can work as long as he wear light shoes that do not irritate his wound. Claimant can stand and walk. Since the separation claimant has not receive worker's compensation.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 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 § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 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.

(emphasis added).

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.

Iowa Admin. Code r. 24.22(2) provides:

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.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

(emphasis added).

The standard of being able to and available for work is independent of whether the injury is work-related or not. See *Geiken v. Luthern Home for the Aged*, 468 N.W.2d 223 (Iowa 1991)(finding harmless error in applying the voluntary quit standards). 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.

The administrative law judge finds that claimant was not on a leave of absence effective June 20, 2021. There was no evidence presented that both parties agreed to a period of time where claimant would be voluntarily unemployed. As such the claimant has been separated from employment with the employer. A decision on whether claimant is entitled to benefits related to the separation will not be decided in this decision since proper notice has not been given to the employer.

Next it must be determined if claimant is able to work and available to work. Claimant has established that he was able to and available to work when he returned to employment with the employer. Claimant was able to perform janitorial work without issue. Claimant has also established that he has worked as a Lyft driver since his separation. Claimant has established that he is able to and available for work in some reasonably suitable, comparable, gainful, full-time employment, which is generally available in the labor market in which he resides. As such, benefits are allowed effective June 20, 2021, provided claimant is otherwise eligible.

DECISION:

The August 31, 2021, (reference 01) unemployment insurance decision is REVERSED. The claimant was able to and available for full-time work effective June 20, 2021. Benefits are allowed, provided he is otherwise eligible.

REMAND:

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



Carly Smith
Administrative Law Judge
Unemployment Insurance Appeals Bureau

November 12, 2021
Decision Dated and Mailed

cs/ol