

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JEFFERY L PEARSON

Claimant

MIDWEST SCAFFOLD SERVICE LLC

Employer

APPEAL 18A-UI-09363-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 07/15/18
Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Able and Available

Iowa Admin. Code r. 871-24.22(2)j – Benefit Eligibility Conditions – Leave of Absence

Iowa Admin. Code r. 871-24.23(10) – Availability Disqualifications – Leave of Absence

STATEMENT OF THE CASE:

The claimant/appellant, Jeffery L. Pearson, filed an appeal from the August 30, 2018 (reference 04) unemployment insurance decision that denied benefits based upon the claimant being on a leave of absence August 12 through August 18, 2018. After proper notice, a telephone hearing was conducted on September 27, 2018. The hearing was held jointly with Appeals 18A-UI-09364-JC-T and 18A-UI-09362-JC-T. The claimant participated personally. Amy Farrell attended as an observer only. The employer did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing.

The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant on an approved leave of absence August 12 through August 18, 2018?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a builder/carpenter and was permanently separated from employment on August 21, 2018 (See Appeal 18A-UI-09362-JC-T).

Prior to separation, the claimant injured his knee while hiking and unable to work pursuant to medical advice from a treating physician. The employer told the claimant it would not accommodate light duty. The claimant was off work as a result July 15 through July 21, 2018 because the employer could not accommodate his restrictions. He returned to work and performed work for a short period of time until he reinjured his knee in early August while doing laundry. He requested and was given a leave of absence for the period of August 12 through August 18, 2018, to allow his knee to heal.

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 August 12 through August 18, 2018, because he was on an approved leave of absence.

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(2)(1), (2) 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.

(2) 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.

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.

The claimant requested and was given a leave of absence to address his personal knee injury for the period from August 12, 2018 to August 18, 2018. Accordingly, he does not meet the eligibility requirements and benefits are denied during this week.

DECISION:

The August 30, 2018 (reference 04) initial decision is affirmed. The claimant was temporarily separated due to a leave of absence. Benefits are denied August 12 through August 18, 2018.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn