

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JESSE FRANK
Claimant

ANDERSON-ERICKSON DAIRY CO
Employer

APPEAL 20A-UI-08378-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/17/20
Claimant: Appellant (5R)

Iowa Code section 96.4(3) – Eligibility – Able to and Available for Work
Iowa Admin. Code r. 871-24.23(10) – Voluntary Leave of Absence

STATEMENT OF THE CASE:

On July 17, 2020, Jesse Frank (claimant/appellant) filed an appeal from the July 10, 2020 (reference 02) unemployment insurance decision that denied benefits as of May 17, 2020, based on a finding claimant requested and was granted a leave of absence.

A telephone hearing was set for August 27, 2020. The parties were properly notified of the hearing. Employer mailed its proposed exhibits to claimant on August 20, 2020. However, claimant had not received the proposed exhibits prior to the hearing. Employer requested the hearing be continued rather than proceeding with the hearing without considering exhibits. Employer agreed to email the proposed exhibits to claimant. Claimant provided an email address, and the exhibits were sent that same day. Claimant acknowledged receipt of the proposed exhibits.

The hearing was rescheduled for September 4, 2020 at 10:30 a.m. The parties were properly notified of the hearing. The claimant participated personally. Anderson-Erickson Dairy Co. (employer/respondent) participated by HR Director Thomas Evans. Fleet Safety Manager Michael Gezel and Distribution Manager Bryan Langdon participated as witnesses for employer. Sherry Miller, HR Manager, observed.

Employer's Exhibits 1-15 were admitted. Official notice was taken of the administrative record.

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's first day of employment was February 24, 2020. The last day claimant worked on the job was May 18, 2020. Claimant was employed full-time as a truck driver. This position required claimant have a valid CDL.

Claimant was cited for OWI on May 16, 2020. Gezel learned of the citation on or about May 18, 2020. Claimant was placed on an unpaid leave of absence at that time, as employer believed claimant had lost his CDL and there were no other positions available.

Employer asked claimant to keep it apprised of the status of his driving privileges. However, claimant was largely non-communicative with employer after being placed on leave. Employer subsequently did a records check on August 8, 2020, and learned that claimant did still have his CDL during this time.

Claimant was not aware that he still had a CDL during this time. However, claimant did not take steps to determine whether or not his CDL had been suspended or revoked during this time, such as contacting the DOT or his attorney to inquire as to its status. There was work available for claimant during this time if he had made it known to employer that his CDL was valid.

Claimant was discharged on August 14, 2020. Claimant's discharge has not yet been the subject of a fact-finding interview. Claimant was able to and available for work following the separation from employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the July 10, 2020 (reference 02) unemployment insurance decision that denied benefits as of May 17, 2020, based on a finding claimant requested and was granted a leave of absence is MODIFIED with no chance in effect. The issue of claimant's separation from employment is REMANDED to the Benefits Bureau for a fact-finding interview and the issuance of an initial decision.

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.

Claimant did not request a leave of absence; he was instead placed on a leave of absence. Nonetheless, claimant was unavailable for work during the period in question.

While employer initially placed claimant on the leave of absence based on the incorrect assumption that his CDL was suspended or revoked, claimant made no effort to determine whether this was in fact the case. Claimant made no inquiry with the DOT or his attorney regarding the status of his CDL. Claimant was in a much better position than employer to be aware of or seek out this information but failed to do so. Employer repeatedly inquired as to the status of claimant's CDL and whether he could return to work. Claimant was largely uncommunicative and failed to make reasonable inquiries as to the status of his license. If he had done so and communicated to employer that his CDL was still valid, there would have been work available for him.

The administrative law judge finds claimant's failure to make these reasonable inquiries resulted in him being unavailable for work during the period in question. He is therefore ineligible for benefits during that time.

Claimant is able to and available for work following the separation from employment and is eligible for benefits from that time, provided he is otherwise eligible.

DECISION:

The July 10, 2020 (reference 02) unemployment insurance decision that denied benefits as of May 17, 2020, based on a finding claimant requested and was granted a leave of absence is MODIFIED with no change in effect. Claimant did not request a leave of absence. However, he was unavailable for work during the period in question and is therefore ineligible for benefits during that time. He is able to and available for work following the separation from employment.

REMAND:

The issue of claimant's separation from employment is REMANDED to the Benefits Bureau for a fact-finding interview and the issuance of an initial decision with appeal rights.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

September 11, 2020
Decision Dated and Mailed

abd/scn

Note to Claimant:

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.