

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**GEORGE H BENDERA**  
Claimant

**MEDIACOM COMMUNICATIONS**  
Employer

**APPEAL 19A-UI-07819-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/01/19  
Claimant: Appellant (2R)**

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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, George H. Bendera, filed an appeal from the October 3, 2019, (reference 02) unemployment insurance decision that denied benefits, stating the claimant was on a requested and approved leave of absence. The parties were properly notified about the hearing. A telephone hearing was held on October 28, 2019. The hearing was held jointly with Appeal 19A-UI-08182-JC-T. The claimant participated personally. The employer contacted the Appeals Bureau prior to the hearing and stated it would not be attending the hearing. The administrative law judge took official notice of the administrative records including the fact-finding documents. Claimant Exhibits A and B were admitted. 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:**

The issue is whether the claimant requested and was approved for a leave of absence.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant has performed work as laborer/in production for this employer since 2015. He last performed work on July 30, 2019 and remains an employee but has not been permitted to work.

On June 16, 2019, the claimant was arrested for an incident in 2013, prior to his employment. The arrest was publicized and the employer pulled him from visiting homes as a technician and required him to stay home and exhaust his PTO. The employer then had him work in its local office in Iowa City and then at the office in Des Moines. The claimant was informed that there was no more office work for him to do and the employer initiated an unpaid leave of absence (Claimant Exhibit A) until the claimant resolved his legal issue. At the time of hearing, the claimant's legal issues had not been resolved. He has remained in contact with the employer (Claimant Exhibit A) and has no other restrictions to his ability to perform work.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did not request a leave of absence.

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. 871-24.23(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.

(emphasis added).

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 credible evidence establishes that the claimant never requested a voluntary leave of absence and is not voluntarily unemployed. The employer initiated an unpaid, indefinite leave of absence or suspension in response to the claimant's arrest on June 16, 2019. Further, the claimant has established that he is able to and available to work, but for the fact the employer will not allow him to return to work while his legal matter is pending. As such, benefits are allowed, provided the claimant is otherwise eligible.

**REMAND:** The issues of whether the claimant has permanently separated from employment and whether his group code should change to reflect permanent separation and required job search contacts are remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

**DECISION:**

The October 3, 2019 (reference 02) unemployment insurance decision is reversed. The claimant did not request a leave of absence and is able to and available for full-time work effective September 1, 2019. Benefits are allowed, provided the claimant is otherwise eligible.

**REMAND:** The issues of whether the claimant has permanently separated from employment and whether her group code should change to reflect permanent separation and required job search contacts are remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

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Jennifer L. Beckman  
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Decision Dated and Mailed

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