

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**RICHARD S WILSON**  
Claimant

**APPEAL NO. 08A-UI-11440-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HEARTLAND EXPRESS INC OF IOWA**  
Employer

**OC: 10-12-08 R: 12**  
**Claimant: Appellant (1)**

Section 96.4-3 – Able and Available  
871 IAC 24.23 (10) – Leave of absence

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the November 25, 2008, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on December 18, 2008. The claimant did participate. The employer did participate through David Dalmasso, Human Resources Representative.

**ISSUE:**

Was the claimant on a leave of absence?

**FINDINGS OF FACT:**

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: The claimant was employed as an over-the-road truck driver, full-time, beginning October 19, 2006, through October 24, 2008, when he voluntarily quit. On October 7, the claimant went to his physician to complete his required DOT physical. The claimant is required to pass a DOT physical in order to maintain his commercial driver's license so he can work as an over-the-road trucker. The claimant's doctor would not pass him, because of sight problems in his left eye. The claimant was referred to an eye doctor, who determined that he had lost sight in his left eye. The claimant notified the employer that he would need time off to complete his physical and to obtain a passing grade on his physical. The claimant was granted 15 days of leave.

After the 15 days expired on October 21, 2008, the claimant reported to the employer that he could not pass the DOT physical, so he would not be able to maintain his CDL and would not be able to return to work. The employer had continuing work available for the claimant if he had been able to return to work.

**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.

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".

871 IAC 24.23(10) provides:

(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 complete his DOT physical and so that he could be recertified to maintain his commercial driver's license. The claimant was not available to work from October 3 through October 24, 2008. Accordingly, benefits are denied.

**DECISION:**

The November 25, 2008, reference 02, decision is affirmed. The claimant is not able to work and available for work effective October 3, 2008. Benefits are withheld until such time as the claimant makes himself available for work to the extent he was available during the base period history.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/kjw