



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.

Similarly, rule 871 IAC 24.23(10) states:

24.23 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 key to the leave of absence rules is that by requesting a voluntary leave of absence a Claimant then enters a “period of voluntary unemployment.” But where the Claimant is working a moonlighting job and then takes a leave of absence, but continues in the full time job, that is no period of unemployment whatsoever. The Claimant then lost the full-time work and it is this that caused the period of unemployment. We base this on court precedent.

In *McCarthy v. Iowa Employment Sec. Commission*, 76 N.W.2d 201, 247 Iowa 760 (Iowa 1956) the claimant worked for Farmer’s Produce Company. He then started to work part-time setting bowling pins (note the 1956 date), which was a moonlighting job. He quit the part-time moonlighting job, then got laid off at Farmer’s and applied for benefits. The agency disqualified for quitting the bowling alley which was a base period employer. The Court reversed reasoning that loss of the moonlighting job did not cause the unemployment and should not totally disqualify for benefits. As the *McCarthy* Court put it: “No one contends plaintiff here was unemployed merely by discontinuing what the trial court appropriately calls his 'sideline.' As plaintiff in effect argues, '44 hours of labor a week between breakfast and supper' is not 'unemployment.’” *McCarthy* at 204. Just so this Claimant did not become unemployed as a result of no longer working for Lowe’s. He became unemployed when he lost his full-time job. We thus cannot find that the leave of absence constituted a voluntary period of unemployment.

At base this Claimant could have quit the Employer and not been wholly disqualified under *McCarthy* and rule 871 IAC 24.27. We see no reason why going on a leave of absence should have a *worse* effect on the Claimant than quitting. This would do nothing but punishing workers for trying to keep that moonlighting job, and would actually encourage them to quit outright rather than go on a leave of absence. Thus under the logic of *McCarthy* and rule 24.27 we find that the Claimant did not enter a voluntary period of unemployment by going on a leave at his moonlighting job.

By the same token, however, we do not make the Claimant better off because he took a leave of absence, and then quit rather than quit right away. Again, in the words of *McCarthy*:

'How about the [moonlighting job]? It did not cause the unemployment. Its rating should not be detrimentally affected. Neither should plaintiff be able to claim anything by virtue of his work there. The Commission would be justified in deleting the [moonlighting job] throughout in processing the claim. The pertinent figures are available in the Commission's record to do this.'

*McCarthy* at 204 (emphasis added). This same reasoning leads us to the conclusion that the Claimant should not be better off from taking the voluntary leave than if he had quit, and thus we allow benefits to the same extent as the Court did in *McCarthy*. The Claimant is thus allowed benefits as of his original claim date of January 3, 2016. His weekly claims made during the pendency of the leave of absence are to be calculated by excluding the wage credits at Lowe's from the claim. We note that around March 16, 2016 the claims bureau issued a decision that appears to have ruled that because of the quit Lowe's should be deleted off this claim as of the date of the quit. That decision can be appealed by following the directions included with that decision. We do not rule on that issue today. But we do rule today that: (1) the disqualification for not being able and available while on a leave of absence is reversed, and (2) the Claimant is allowed benefits from January 3, 2016 through the date of his quit, that is, through the week ending February 6, 2015, and (3) the benefits we allow today will be at a level calculated by omitting the wage credits earned at Lowe's from the base period.

Again, to be clear, for the weeks following the quit there will *not* be a total disqualification based on leave of absence, and instead the adjudication of the quit issue will govern whether to allow benefits following February 6, 2015, and if so, at what level of benefits. We do not today address the quit issue because that has been adjudicated by the Claims Bureau and no appeal yet shows up in the agency records. Finally we again note that the claims decision of March 16, 2016 can be appealed by following the directions included with that decision.

**DECISION:**

The administrative law judge's decision dated February 24, 2016 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was not rendered unavailable by going on a voluntary leave of absence at his moonlighting job. Accordingly, the Claimant is allowed benefits provided the Claimant is otherwise eligible. The benefits are allowed from January 3, 2016 through the week ending February 6, 2015, and shall be calculated by excluding wage credits earned at Lowe's from the base period. Lowe's will not be charged for benefits paid during this period. The effect on benefits caused by the Claimant quitting his job at Lowe's on February 8, 2016 shall be governed by the decision issued by the Claims Bureau concerning that quit, and the outcome of any appeal that be filed from that Claims Bureau decision.

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