

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES H KING
Claimant

APPEAL NO: 09A-UI-16181-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 09/20/09
Claimant: Appellant (1)

Section 96.4-3 – Ability to and Availability for Work

STATEMENT OF THE CASE:

The claimant appealed a representative's October 15, 2009 decision (reference 01) that concluded he was not eligible to receive benefits as of September 20, 2009, because his physician restricted him from doing any work. A telephone hearing was scheduled on November 16, 2009. The claimant responded to the hearing notice, but was not available for the hearing. Roxanne Nowicki appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

As of September 20, 2009, is the claimant able to and available for work?

FINDINGS OF FACT:

The claimant started working for the employer as a full-time kitchen clerk on August 29, 2007. The claimant requested and the employer granted him a medical leave of absence on September 11, 2009, for a non-work-related medical condition. The employer has the claimant's job available for him to return to when the claimant's physician releases him to return to work.

REASONING AND CONCLUSIONS OF LAW:

Each week a claimant filed a claim for benefits, he must be able to and available for work. Iowa Code section 96.4-3. The law presumes a claimant is not eligible to receive benefits when he requests and is granted a leave of absence. This is considered as a period of voluntary unemployment. 871 IAC 24.23(10).

While the claimant is on a medical leave of absence, he is not eligible to receive benefits. To become eligible to receive benefits, the claimant must reopen his claim; present documentation that his physician has released him to work; and establish the employer does not have work for the claimant after the claimant offered to return to work.

DECISION:

The representative's October 15, 2009 decision (reference 01) is affirmed. The claimant is not able to or available for work while he is on a medical leave of absence because his physician has restricted him from working. As of September 20, 2009, the claimant is not eligible to receive benefits. To become eligible, the claimant must reopen his claim and establish his availability by presenting a doctor's statement that he has been released to work and establish that the employer does not have a job for the claimant to do.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs