

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES W MONKS

Claimant

APPEAL NO. 11A-UI-14500-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

AGRI STAR MEAT & POULTRY

Employer

OC: 04/17/11

Claimant: Respondent (2/R)

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

STATEMENT OF THE CASE:

Agri Star Meat & Poultry (employer) appealed a representative's October 27, 2011 decision (reference 02) that concluded James Monks (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 1, 2011. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Laura Roney, Payroll Human Resources Assistant.

ISSUE:

The issue is whether the claimant is available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked for the employer from October 12, 2008, to October 2, 2011. On October 2, 2011, the employer talked to the claimant about his situation. The claimant said that his brother had a serious medical condition. The employer asked the claimant if he would like to take an unpaid leave of absence to be with his brother. The claimant indicated his desire to take the unpaid leave of absence by writing his name on the unpaid leave of absence form. The claimant has not appeared for work since October 2, 2011. He last contacted the employer in mid-October 2011. The employer considers the claimant to be still employed as of December 1, 2011, but cannot hold the claimant's position for much longer if the claimant does not contact the employer.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the claimant is disqualified from receiving unemployment insurance benefits..

871 IAC 24.23(16) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

When an employee requests and is granted time off, he is considered to be unavailable for work. The claimant requested a reduction of his hours and the employer granted his request. The change in hours was initiated by the claimant. He is considered to be unavailable for work from October 2, 2011. The claimant is disqualified from receiving unemployment insurance benefits from October 2, 2011, due to his unavailability for work.

Iowa Code § 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received benefits since filing the claim herein. Pursuant to this decision, those benefits may now constitute an overpayment. The issue of the overpayment is remanded for determination.

DECISION:

The representative's October 27, 2011 decision (reference 02) is reversed. The claimant is disqualified from receiving unemployment insurance benefits because he is not available for work with the employer. The issue of the overpayment is remanded for determination.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs