

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANNY W DICKERSON
Claimant

APPEAL NO: 06A-UI-10187-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DONALDSON COMPANY INC
Employer

**OC: 09/10/06 R: 02
Claimant: Appellant (2)**

871 IAC 24.22(2)(j) – Leave of Absence
Iowa Code section 96.4-3 – Ability to and Availability for Work

STATEMENT OF THE CASE:

Danny W. Dickerson (claimant) appealed a representative's October 18, 2006 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits, because he requested and Donaldson Company, Inc. (employer) granted him a medical leave of absence. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 1, 2006. The claimant participated in the hearing. The employer responded to the hearing notice. When the employer's representative, Bill Stasek, was contacted for the hearing, he informed the administrative law judge that the employer had decided it would not participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant request a medical leave of absence?

Is the claimant able to and available for work?

FINDINGS OF FACT:

The claimant started working for the employer in April 2004. The claimant worked as a full-time welder. In 2004 the claimant had a heart attack. When the claimant's doctor released him to return to work, the claimant had a permanent restriction that he could not lift anything over his head. The claimant's job did not require him to lift anything over his head because the employer used cranes or other equipment when lifting was required. The employer allowed the claimant to return to work after he recovered from a heart attack even though he had a permanent lifting restriction.

The claimant experienced numbness in his arms and hand. As a result of the numbness the claimant started dropping items. On February 8, 2006, the claimant went on a medical leave of absence to find out what was wrong. The claimant's doctor ultimately determined the claimant needed neck surgery. The surgery was done in May.

The claimant's doctor released the claimant to return to work on September 12, 2006. When the claimant was released to work, he had work restrictions that he could not lift more than 50 pounds to his shoulders and could not lift more than 20 pounds above his head. Although the claimant's job required him to lift neither of these weights, the employer informed the claimant that based on his current work restrictions and the employer's contract, the claimant could not at that time return to his regular job. The employer reviewed its job openings and did not have any job that met the claimant's work restrictions. The employer informed the claimant that because his neck surgery was not work-related, the employer did not have to make accommodations for him. Even though the claimant's job did not require him to violate his work restrictions, the employer informed him that all he could do was take a leave of absence to preserve his employment. The claimant signed the leave of absence papers. The claimant has another doctor's appointment on November 7 and hopes to be released to work without any work restrictions.

The claimant established a claim for unemployment insurance benefits during the week of September 10, 2006. The claimant is able to work as long as the work does not require him to violate his work restrictions.

REASONING AND CONCLUSIONS OF LAW:

When a leave of absence is negotiated with the consent of both parties, the claimant is considered to be voluntarily unemployed and is not eligible to receive unemployment insurance benefits. 871 IAC 24.22.(2)(j). Based on the evidence presented during the hearing, the employer gave the claimant an ultimatum of going on a leave of absence or losing his job. Even though the claimant could have performed his work without violating his work restrictions, he followed the employer's directives and signed paperwork to take a leave of absence. For unemployment insurance purposes, the claimant is not voluntarily unemployed.

Each week a claimant files a claim for benefits, he must be able to and available for work. Iowa Code section 96.4-3. A preponderance of the evidence presented during the hearing, indicates the claimant is able to and available for work. Therefore, as of September 10, 2006, the claimant is eligible to receive unemployment insurance benefits.

DECISION:

The representative's October 18, 2006 decision (reference 01) is reversed. The claimant is not voluntarily unemployed because the employer insisted the claimant go on a medical leave of

absence even though as of September 10 the claimant was able to perform his job without violating his work restrictions. As of September 10, 2006, the claimant is eligible to receive unemployment insurance benefits, provided he meets all other eligibility requirements.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs