

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL J QUICK
Claimant

APPEAL NO. 11A-UI-13068-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ART PAPE TRANSFER INC
Employer

OC: 09/04/11
Claimant: Appellant (1)

Section 96.5-2-a – Discharge
871 IAC 24.23(10) – Leave of Absence

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated September 30, 2011, reference 01, which denied unemployment insurance benefits. After due notice, a telephone hearing was held on October 27, 2011. Claimant participated personally. The employer participated by Mr. Kyle Tigges, Safety Director.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits or whether the claimant is able and available for work while on an approved leave of absence.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Michael Quick was employed by Art Pape Transfer Inc. from March 31, 2011 until August 31, 2011 when he was placed on a medical leave of absence due to his failure to successfully pass a random DOT drug test on August 25, 2011.

Under the terms of the agreement between Mr. Quick and Art Pape Transfer, Mr. Quick is to enter and complete a rehabilitation program. Upon successful completion of the program, it is the employer's intention to reinstate the claimant to his same or similar truck driving job. While on the approved leave of absence Mr. Quick has been contacted on at least three occasions by the employer to determine his status and potential return date.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant is not able and available for work within the meaning of the Employment Security Law.

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 24.22(2)j(1)(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(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.

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.

A leave of absence negotiated with the consent of both parties the employer and the employee is deemed a period of voluntary unemployment for the employee individual and the individual is considered ineligible for benefits for the period. 871 IAC 24.22(2)(j). If at the end of a period of negotiated leave of absence the employer fails to re-employ the employee individual the individual is considered laid off and eligible for benefits provided that the claimant has met all the requirements of the leave of absence. 871 IAC 24.22(2)(j)(1). On the other hand if the employee individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered to have voluntarily quit and is therefore ineligible for benefits. 871 IAC 24.22(j)(2).

The evidence establishes that Michael Quick is on an approved leave of absence and therefore does not meet the availability requirements of the law and is ineligible to receive unemployment insurance benefits.

DECISION:

The Agency representative's decision dated September 30, 2011, reference 01, is affirmed as modified. The claimant is ineligible to receive unemployment insurance benefits. The claimant is on a period of negotiated leave of absence and is ineligible for benefits until such time as the claimant makes himself available for work to the extent he was available during the based period history.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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