

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DAVID E MCCLURE**  
Claimant

**APPEAL NO. 11A-UI-05490-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**NEIGHBORHOOD PATROL INC**  
Employer

**OC: 03/13/11**  
**Claimant: Appellant (4-R)**

Section 96.4-3 – Eligibility for Benefits  
871 IAC 24.23(10) – Leave of Absence

**STATEMENT OF THE CASE:**

David E. McClure filed a timely appeal from an unemployment insurance decision dated April 14, 2011 which imposed an open-ended denial of unemployment insurance benefits effective March 13, 2011 upon a finding that Mr. McClure was unemployed due to a negotiated leave of absence. After due notice was issued, a telephone hearing was held May 19, 2011 with Mr. McClure participating. Operations Manager David Lee participated for the employer, Neighborhood Patrol, Inc. The administrative law judge takes official notice of agency benefit payment records.

**ISSUE:**

Is the claimant eligible for unemployment insurance benefits?

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: David E. McClure began working for Neighborhood Patrol, Inc. in January 2002. He last worked on March 11, 2011 as a dock master.

Mr. McClure arranged for a leave of absence due to a surgery that was initially scheduled for March 15, 2011. The surgery was postponed until March 25, 2011. Mr. McClure was released to return to work on March 30, 2011. No work was available at that time because Mr. McClure's former position had been filled.

The agency has coded Mr. McClure as an individual on temporary layoff who is exempt from conducting a work search.

**REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether, and if so, when, the claimant is eligible to receive unemployment insurance benefits. For the reasons that follow, the

administrative law judge concludes that he is eligible for unemployment insurance benefits beginning with the week of March 27, 2011.

Iowa Code § 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".

According to 871 IAC 24.23(10), an individual on a negotiated leave of absence is considered to be voluntarily unemployed and thus ineligible for unemployment insurance benefits. The rule also provides, however, that if no work is available from the employer at the time of the end of the leave of absence, the individual may receive unemployment insurance benefits. The evidence persuades the administrative law judge that work was not available for Mr. McClure as of the date that he was released to return to work on March 30, 2011. Since he was available for the majority of the work week that began on March 27, 2011, benefits are allowed for that week and for weeks following until Mr. McClure returns to employment.

The agency considers that Mr. McClure is on a temporary layoff and is exempt from conducting a work search. The issue of whether Mr. McClure has any expectation of further work from Neighborhood Patrol, Inc. or whether he must begin conducting an active work search is remanded to the Unemployment Insurance Services Division.

**DECISION:**

The unemployment insurance decision dated April 14, 2011 is modified in favor of the appellant. Benefits are withheld from March 13, 2011 through March 26, 2011 because of the leave of absence. Benefits are allowed beginning March 27, 2011, provided the claimant is otherwise eligible. The question of whether Mr. McClure remains temporarily unemployed is remanded to the Unemployment Insurance Services Division.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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