

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAWAYNE B LEACH

Claimant

APPEAL NO. 10A-UI-06518-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

OC: 03/21/10

Claimant: Appellant (1)

871 IAC 24.23(10) – Voluntary Leave of Absence

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated April 26, 2010, reference 02, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 22, 2010. Claimant participated. Employer participated by Brian Becker, assistant manager. The record consists of the testimony of Brian Becker and the testimony of Dawayne Leach.

ISSUE:

Whether the claimant is on a voluntary leave of absence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant was employed as a maintenance supervisor at a Wal-Mart store in Des Moines, Iowa. The claimant was initially hired on November 15, 2004, as a full-time employee. The claimant is still employed by Wal-Mart. His job is available for him once he is released to return to work.

On March 5, 2010, the claimant requested a voluntary leave of absence due to an injury that was non-work-related. The claimant is also utilizing Family Medical Leave Act (FMLA) leave. The claimant needs surgery on his hand. The claimant was scheduled to have the surgery four weeks ago, but his physician discovered that he had diabetes. Surgery cannot be performed until the claimant's diabetes is under control. The claimant hopes to have the surgery soon.

REASONING AND CONCLUSIONS OF 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.

The evidence established that the claimant requested and was granted a leave of absence in order to recover from a non-work-related condition. That leave of absence is still in force. The claimant is, by law, considered ineligible for benefits during this period. Benefits are denied.

DECISION:

The decision of the representative dated April 26, 2010, reference 02, is affirmed. Benefits are denied as of March 21, 2010.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs