

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

OTHEL J THOMAS

Claimant

APPEAL NO: 18A-UI-11396-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ENTERPRISE RENT-A-CAR COMPANY

Employer

OC: 11/04/18

Claimant: Appellant (2)

871 IAC 24.23(10) – Leave of Absence

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 21, 2018, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 10, 2018 and continued to December 11, 2018. The claimant participated in the hearing. Nolan Lee, Area Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant is able and available for work and whether he is on a leave of absence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant had a pulmonary embolism and as a result had a lung biopsy performed June 15, 2018. The specialist who treated the claimant faxed a note to the employer June 15, 2018, stating the claimant could return to work. On June 22, 2018, the claimant had an appointment with his primary care physician who excused him from work from June 18 through June 24, 2018, while he recovered from the lung biopsy and stated he could resume regular duties as of June 25, 2018. The claimant returned to his job and worked until July 22, 2018, at which time Branch Manager Rebecca Pritchard told the claimant he had not provided a current release to return to work. The claimant told her he provided the notes he received and could not get another note. Ms. Pritchard told the claimant he could not work without a current note and the claimant believed his employment was terminated. The area manager believed the claimant was on a leave of absence but the claimant never sought nor was offered a leave of absence.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is able and available for work and did not take a leave of absence.

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".

Iowa Admin. Code r. 871-24.22(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.

Iowa Admin. Code r. 871-24.23(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 claimant has no restrictions that would prevent him from working his previous job and is considered able and available for work. He was not offered and did not request a leave of

absence and the claimant believed his manager terminated his employment. The claimant provided the employer with a note from his lung specialist saying he could return to work June 18, 2018, without restrictions and a note from his primary care physician stating he could return to work June 25, 2018, without restrictions. The claimant returned to work June 25, 2018, and worked through July 22, 2018, when his manager told him he had to provide another note or his employment would be terminated. The manager was not clear about what kind of new note the claimant needed to supplement his other two medical notes and the claimant did not believe he could get a new note. As a result, he believed his employment was terminated by his manager.

The claimant never requested and was never offered a leave of absence. The facts of this case most closely resemble a layoff when the employer would not allow the claimant, with no restrictions, to return to work.

Because the claimant is able and available for work and is not on a leave of absence, benefits must be allowed, provided the claimant is otherwise eligible.

DECISION:

The November 21, 2018, reference 01, decision is reversed. The claimant is able and available for work and did not take a leave of absence. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn