

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BOBBY J THOMPSON

Claimant

APPEAL NO. 12A-UI-06301-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

OC: 04/22/12

Claimant: Appellant (1)

871 IAC 24.23(10) – Leave of Absence

STATEMENT OF THE CASE:

The claimant filed an appeal from a decision of a representative dated May 29, 2012, reference 02, which held that the claimant was not eligible to receive unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 21, 2012. Claimant participated. The employer failed to respond to the hearing notice and did not participate. The record consists of the testimony of Bobby Thompson. This case was heard in conjunction with 12A-UI-06300-VST.

ISSUE:

Whether the claimant is on an approved leave of absence.

FINDINGS OF FACT:

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

The claimant is employed by the Wal-Mart store located in Sioux City, Iowa. The claimant has worked there for four years as a maintenance person. His last day of actual work was September 20, 2011. He was experiencing problems with his right hand and eventually underwent surgery for carpal tunnel syndrome. The claimant continued to have symptoms and had an MRI, which showed two “pinched nerves” in his neck. The claimant had neck surgery on January 13, 2012. He is still healing from that surgery and will not be released to full duty until the end of July 2012. The claimant’s neck condition is not work related.

The claimant had been receiving short-term disability benefits until those benefits ran out in April 2012. He is on a personal leave from Wal-Mart. He is not looking for work. He could return to work if Wal-Mart would accommodate his light-duty restrictions.

REASONING AND CONCLUSIONS OF LAW:

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.

The evidence is uncontroverted that the claimant is presently on an approved leave of absence from the employer. He has not been released to return to full duty. Under these circumstances the claimant is not considered able and available for work. Benefits are denied.

DECISION:

The decision of the representative dated May 29, 2012, reference 02, is affirmed. The claimant is not able and available for benefits effective April 22, 2012.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css