

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHARLES R LEAF
Claimant

APPEAL NO. 13A-UI-03894-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

FORWARD AIR SOLUTIONS INC
Employer

OC: 03/03/13
Claimant: Respondent (2-R)

Section 96.4-3 – Able and Available
871 IAC 24.23(6) – Unable to Work/Injury
871 IAC 24.22(2)j – Leave of Absence
871 IAC 24.13(3)d – TTD/Workers Compensation
Section 96.3-7 – Recovery of Overpayment

STATEMENT OF THE CASE:

The employer appealed from a representative's decision dated March 28, 2013, reference 01, that held claimant was able and available for work March 3, 2013, and benefits are allowed. A hearing was held on May 7, 2013. The claimant participated. Don Sheridan, Manager, participated for the employer.

ISSUES:

The issue is whether claimant is able and available to work.

The issue is whether claimant is overpaid UI benefits.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds that: The claimant suffered a work-related injury on August 14, 2012. He was put on a worker's compensation leave of absence. He is restricted to light-duty work by his doctor with a lifting restriction of not more than 20 pounds. The employer does not have light-duty work available to offer claimant.

He is receiving TTD worker's compensation in the amount of \$297.36 weekly, and he has not reached his maximum healing point where he has received a permanent impairment rating. Claimant has been receiving UI benefits on his current claim. He is still considered an employee subject to a no work restriction return to employment.

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)(3) provides:

Benefit 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.

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.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

The administrative law judge concludes claimant does not meet the availability requirements of the law as of March 3, 2013 and benefits are denied.

Claimant's doctor has restricted him to light-duty work that means he is unable to perform all of his duties as a full-time employee. He has been granted a leave of absence and he is receiving TTD weekly compensation benefits of \$297.36 that is fully deductible from UI benefits. A leave of absence is a voluntary period of unemployment.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault,

the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Since claimant has been disqualified in this matter while receiving benefits, the overpayment issue is remanded to Claims for a decision.

DECISION:

The decision of the representative dated March 28, 2013, reference 01, is reversed. The claimant does not meet the availability requirements of the law and he is receiving disqualifying weekly TTD worker's compensation. The overpayment issue is remanded.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css