

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIMOTHY P RUSHFORD
Claimant

APPEAL NO: 10A-UI-09243-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

WALTON FOOD ENTERPRISES INC
Employer

OC: 05/16/10
Claimant: Appellant (1)

Section 96.4-3 – Able and Available
871 IAC 24.22j – Leave of Absence

STATEMENT OF THE CASE:

The claimant appealed a department decision dated June 22, 2010, reference 02, that held he is voluntarily unemployed due to a leave of absence, and benefits are denied effective May 16, 2010. A telephone hearing was held on August 13, 2010. The claimant participated. Jason Walton, President, participated for the employer.

ISSUE:

Whether the claimant is able and available for work.

Whether the claimant is on a leave of absence.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant worked for the employer as a part-time delivery driver (two days a week) from June 9, 2009 to March 16, 2010. The claimant was arrested for an OWI first offense (non-work related) and his license was suspended. When the claimant informed the employer, he was relieved of his delivery driver duties, as he needed a valid license to drive. The employer put the claimant on on-call work status performing other job duties as needed, and he was called in for some work into the first week of April.

The claimant's license is suspended until September 23, 2010. He recently accepted another job, but he plans to return to work as a driver when his license is re-instated. The employer considers the claimant as an employee on leave until his regains his license privilege.

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 that the claimant is on leave of absence status from his employer that is a voluntarily period of unemployment until his driver's license is re-instated.

The claimant has accepted leave from employment status that is considered a voluntary period of unemployment as he has not been discharged nor has he quit employment. The claimant is considered not able and available for work with the employer, because he cannot perform his delivery driver job due to his license suspension. The employer is not required to find other duties the claimant's may perform at the workplace.

When the claimant regains his license and returns to the employer, should he be terminated for any reason, then he may re-file for benefits at that time.

DECISION:

The department decision dated June 22, 2010, reference 02, is affirmed. The claimant is on a leave of absence and voluntarily unemployed as of May 16, 2010. Benefits are denied.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs