

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CARLOS G VILLASENOR
Claimant

APPEAL NO: 12A-UI-05237-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FBG SERVICE CORPORATION
Employer

OC: 03/18/12

Claimant: Appellant (5)

Section 96.4-3 – Able and Available
871 IAC 24.22(2)j – Leave of Absence

STATEMENT OF THE CASE:

Carlos G. Villasenor (claimant) appealed a representative's April 23, 2012 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits in connection with FBG Service Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 12, 2012. The claimant participated in the hearing. Toni McColl of TALX Employer Services appeared on the employer's behalf and presented testimony from one witness, Jamie Losch. Ike Rocha served as interpreter. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was the claimant eligible for unemployment insurance benefits by being able and available for work?

Was there period of voluntary unemployment through a leave of absence?

FINDINGS OF FACT:

The claimant started working for the employer on or about July 4, 2010. He originally worked full-time, but in about August 2011, due to having another job doing construction, he changed his position to part-time (20 hours per week), working as a cleaning specialist at a number of the employer's Waterloo, Iowa, business clients. His last day of work was January 31, 2012.

The claimant suffered an injury to his shoulder on his other job which prevented him from continuing working either job; he had surgery on February 1 in which he had pins implanted into his shoulder. He arranged with the employer to be placed on a leave of absence status. The initial term of that leave was for 90 days, which would take him through approximately the end of April. In March the claimant's doctor advised him that he might need to be off work for up to a year, but at least three more months. In May the claimant informed his supervisor with the employer that he was not yet released for work; the supervisor indicated the claimant should

keep the employer informed as to his status. On about June 15, the claimant made a move to Connecticut with his family because his mother-in-law was in the hospital. He was making new medical connections in the Connecticut area, but as of the date of the hearing he had not yet been released by a doctor as able to return to the type of work he had done with the employer, and while he had not yet abandoned hope of returning to Iowa and attempting to return to work with the employer, he had not yet sought to do so.

REASONING AND CONCLUSIONS OF LAW:

For each week for which a claimant seeks unemployment insurance benefits, he must be able and available for work. Iowa Code § 96.4-3. In general, an employee who is only temporarily separated from his employment due to being on a leave of absence is not “able and available” for work during the period of the leave, as it is treated as a period of voluntary unemployment. 871 IAC 24.22(2)j; 871 IAC 24.23(10).

The claimant’s current unemployment is due to his being on a leave of absence due to a medical issue not shown to be caused or aggravated by his employment with this employer. As the condition causing his temporary unemployment was not related to the employer’s work environment, in order to be sufficiently well for the claimant to regain his eligibility status as being able and available for work, he must have a complete recovery to full work duties without restriction. *Hedges v. Iowa Department of Job Service*, 368 N.W.2d 862, 867 (Iowa App. 1985); Iowa Code § 96.5-1-d. Unemployment insurance benefits are not intended to substitute for health or disability benefits. *White v. Employment Appeal Board*, 487 N.W.2d 342 (Iowa 1992). For the period the claimant is seeking unemployment insurance benefits, he has been under sufficient work restrictions as would preclude him from returning to his regular work duties. He is therefore not eligible to receive unemployment insurance benefits.

DECISION:

The representative’s April 23, 2012 decision (reference 01) is modified with no effect on the parties. The claimant was not able and available for work effective March 18, 2012, and the period of temporary separation was a period of voluntary unemployment not attributable to the employer. The claimant is not qualified to receive unemployment insurance benefits until or unless he is fully released and does attempt to return to work with the employer, or until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw