

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WESLEY P NEMMERS
Claimant

APPEAL NO. 11A-UI-16222-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEARBURY & SMITH INC
Employer

OC: 11-06-11
Claimant: Appellant (2)

Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the December 12, 2011, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on January 24, 2012. The claimant did participate. The employer did not participate. Claimant's Exhibit A was entered and received into the record. Claimant's exhibit A was entered and received into the record.

ISSUE:

Is the claimant able to and available for work and/or was he on a leave of absence?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a call center supervisor, full-time, beginning May 24, 2010, through November 4, 2011, when he was discharged. The claimant was off work on a leave of absence due to stress and depression exacerbated by his work environment beginning in June 2011. His treating physician released him to return to work on September 10, 2011, with the limitation that he work no more than four hours per day and with a different supervisor. The employer was unable to accommodate his work restrictions and the claimant remained off work. On October 28, 2011, the employer notified him that unless he was able to return to work without restriction to the position he had held when he went out on leave, he would be replaced beginning on November 4, 2011. The claimant was not able to return to work and, thus, he was discharged. He is currently able to work with no limitations at all.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work effective November 6, 2011.

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".

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.

871 IAC 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 requested and was given a leave of absence to recover from his stress and depression. When he recovered, the employer was not able to return him to the work environment. He is currently able to and available for work. Accordingly, benefits are allowed.

DECISION:

The December 12, 2011 (reference 02) decision is reversed. The claimant is able to work and available for work effective November 6, 2011. Benefits are allowed, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw