

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LELAND A WILLIAMS
Claimant

APPEAL NO: 06A-UI-08252-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CITY OF ACKLEY
Employer

**OC: 07-02-06 R: 02
Claimant: Appellant (1)**

Section 96.4-3 - Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 9, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on August 31, 2006. The claimant did participate. The employer did participate through Carol Williams, City Clerk and Pat Scallon, Police Chief.

ISSUE:

Was the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a reserve police officer on an as-needed basis beginning February 28, 2002 through April 15, 2006 when he requested and was granted a leave of absence. He returned from his leave of absence on June 23, 2006. The claimant requested and was granted a leave of absence while he went to Chicago for a little over one month to look for full-time work. The claimant returned after his leave of absence was over and returned to work in the same capacity he was working prior to his leaving. The claimant was back at work by the City's annual sauerkraut days on June 23, 24 and 25.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work from April 15 through June 23, 2006.

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) 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 go to Chicago to look for a full-time job. A leave of absence is a period of voluntary unemployment and the claimant is ineligible for benefits during such a period. Accordingly, benefits are denied during the claimant's leave of absence from April 15, 2006 through June 23, 2006.

871 IAC 24.23(26) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced

workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

Since returning from his leave of absence the claimant is working the same hours and schedule that he worked prior to leaving, that is on an as-needed or on-call basis. The claimant cannot be considered partially unemployed because he has returned to the same job with the same work hours he was performing prior to his leave of absence. According, benefits are denied effective June 23, 2006.

DECISION:

The August 9, 2006, reference 01, decision is affirmed. The claimant is not able to work and available for work effective April 15, 2006. Benefits are denied.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/cs