

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUAN C VALVERDE
Claimant

APPEAL NO. 10A-UCX-00012-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 01/24/10
Claimant: Appellant (4)

Section 96.4(3) – Able and Available
871 IAC 24.23(10) – Leave of Absence

STATEMENT OF THE CASE:

The claimant, Juan Valverde, filed an appeal from a decision dated February 24, 2010, reference 03. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on April 9, 2010. The claimant participated on his own behalf. The employer, Hy-Vee, participated by Human Resources Manager Angela Handling.

ISSUE:

The issue is whether the claimant is on a leave of absence.

FINDINGS OF FACT:

Juan Valverde was employed by Hy-Vee beginning May 26, 2008. He is a part-time courtesy employee. In July 2009 he requested, and was granted, a leave of absence for military duty. On January 25, 2010, his military service ended and he contacted Hy-Vee and asked to return to work. Because the schedule had already been set, he was not able to start until February 17, 2010.

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 24.23(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.

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.

The claimant was on an approved leave of absence from July 2009 until January 24, 2010. He was able to return to work at the time he filed his claim for unemployment benefits but no work was available. As of February 17, 2010, he has been working the same hours as he was prior to going on the leave of absence.

DECISION:

The representative's decision of February 24, 2010, reference 03, is modified in favor of the appellant. Mr. Valverde is eligible for benefit from January 24 through February 20, 2010. He is ineligible beginning February 21, 2010, as he began working in the same capacity as he was prior to the leave of absence.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs