

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**GARY D STARN**  
Claimant

**APPEAL NO. 08A-UI-10106-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**USA STAFFING INC – LABOR WORLD**  
Employer

**OC: 08/24/08 R: 02  
Claimant: Appellant (4)**

Section 96.4(3) – Able and Available  
Section 96.5(1)d – Separation Due to Injury

**STATEMENT OF THE CASE:**

Gary Starn filed an appeal from a representative's decision dated October 24, 2008, reference 02, which denied benefits based on his separation from USA Staffing, Inc. After due notice was issued, a hearing was held by telephone on November 17, 2008. Mr. Starn participated personally. The employer participated by Amy Freeman, Branch Manager, and was represented by Jeff Oswald of Unemployment Insurance Services.

**ISSUE:**

At issue in this matter is whether Mr. Starn has been able to and available for work since filing his claim for job insurance benefits.

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Starn began working for USA Staffing, Inc. in July of 2007. His last assignment was with Woodruff Construction, where he began working full time on April 25, 2008. On June 18, he sustained a back injury while at work. When he was released from the hospital, he could only perform modified duty. The employer did not have work available that fit within his medical restrictions.

Mr. Starn provided the employer a medical release dated July 14 but could still only perform modified duty. He provided a release dated August 13 that indicated he would need to be on modified duty for one week and then could return to full duty as of August 25. The employer did not have modified duty available on July 14 or August 13. Mr. Starn was again in contact with the employer after his full release but there was still no work available. He then filed a claim for job insurance benefits effective August 24, 2008.

Mr. Starn underwent back surgery on October 7, 2008. He has not been released to perform any type of work at any point since the surgery. He last claimed job insurance benefits for the week ending September 13, 2008.

**REASONING AND CONCLUSIONS OF LAW:**

In order to receive job insurance benefits, an individual must be able to work and available for work. Iowa Code section 97.4(3). An individual who is on a leave of absence is considered voluntarily unemployed and, therefore, not eligible to receive job insurance benefits. See 871 IAC 24.22(2)j. Although Mr. Starn had been on a leave of absence, it ended on or about August 25, 2008 when he was released to full duty. Therefore, he was not on a leave of absence when he filed his claim for benefits.

Mr. Starn became separated from USA Staffing, Inc. because the employer did not have work available for him. The employer did not have work when he was released for modified duty and still did not have work when he was released for full duty. As such, his separation was not for any disqualifying reason.

After considering all of the evidence, the administrative law judge concludes that Mr. Starn is entitled to job insurance benefits because he was separated from employment for no disqualifying reason but remained available for work until he underwent surgery. He is disqualified from receiving benefits as of the Sunday of the week in which he had the surgery, October 5, 2008 as he was no longer able to work.

**DECISION:**

The representative's decision dated October 24, 2008, reference 02, is hereby modified. Mr. Starn is allowed benefits, provided he is otherwise eligible, effective August 24, 2008 as he satisfied the availability requirements of the law. Benefits are denied effective October 5, 2008 and until such time as he presents proof to this local Workforce Development office that he has been released to return to work.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

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