

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOHN N WENTE**  
Claimant

**APPEAL NO. 10A-UI-11151-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MIDWEST JANITORIAL SERVICE INC**  
Employer

**OC: 05/16/10**  
**Claimant: Appellant (5)**

Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated August 4, 2010, reference 02, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on October 25, 2010. Claimant participated. Employer participated by Dave Neuhaus, branch manager—Quad Cities. The record consists of the testimony of John Wente and the testimony of Dave Neuhaus.

**ISSUE:**

Whether the claimant is able and available for work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant worked as a part-time custodian. He requested a voluntary leave of absence due to medical problems. The leave was requested in late 2009 or early 2010. The claimant has not returned to work nor asked his employer to return him to work. The claimant is unable to work due to medical problems, most recently lung surgery.

**REASONING AND CONCLUSIONS OF LAW:**

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(1) provides:

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

(1) An individual who is ill and presently not able to perform work due to illness.

The evidence is uncontroverted that the claimant requested a leave of absence at least ten months ago due to medical problems. The claimant is unable to work. He has not asked his employer if he can return to work. The claimant is not eligible for benefits because he is not able or available for work.

**DECISION:**

The decision of the representative dated August 4, 2010, reference 02, is modified without effect. The claimant is not eligible for benefits because he is not able and available for work.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/pjs