

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NETE-SIE THOMSON**

Claimant

**APPEAL NO. 08A-UI-09418-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CENTRAL IOWA HOSPITAL CORP**

Employer

**OC: 09/14/08 R: 02  
Claimant: Appellant (3)**

Section 96.4-3 – Able and Available  
871 IAC 24.22(2)j – Leave of Absence

**STATEMENT OF THE CASE:**

Nete-Sie Thomson (claimant) appealed a representative's October 10, 2008 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits in connection with Central Iowa Hospital Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 30, 2008. The claimant participated in the hearing. The employer failed to respond to the hearing notice and provide a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. During the hearing, Claimant's Exhibit A was entered into evidence. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Was the claimant eligible for unemployment insurance benefits by being able and available for work? Was there period of voluntary unemployment through a leave of absence?

**FINDINGS OF FACT:**

The claimant started working for the employer in about December 2000. For approximately the last two years he has worked full time on a Friday, Saturday, Sunday 7:00 p.m. to 7:00 a.m. schedule as a certified nursing aide (CNA) at the employer's hospital. His most recent day of work was on or about September 7.

On September 12, while off work, the claimant broke his leg, necessitating surgery on September 18. He is presently on FMLA (Family Medical Leave). His doctor ordered him completely off work until October 22; as of October 22, the doctor released the claimant for work with significant restrictions, that he must sit one to five hours, and that he must elevate his leg. The claimant cannot perform the essential functions of his regular job with these restrictions. Since the injury was not work-related, the employer declined to find other work for the claimant that would fit within his restrictions. The claimant is next scheduled to see his doctor three weeks from October 20.

## **REASONING AND CONCLUSIONS OF LAW:**

For each week for which a claimant seeks unemployment insurance benefits, he must be able and available for work. Iowa Code § 96.4-3. In general, an employee who is only temporarily separated from his employment due to being on a leave of absence is not “able and available” for work during the period of the leave, as it is treated as a period of voluntary unemployment. 871 IAC 24.22(2)j; 871 IAC 24.23(10)

The claimant's current unemployment is due to his being on a leave of absence due to a non-work-related medical issue. As the condition causing his temporary unemployment was not related to the work environment, in order to be sufficiently well for the claimant to regain his eligibility status as being able and available for work, he must have a complete recovery to be able to fully perform his essential work duties without restriction. Hedges v. Iowa Department of Job Service, 368 N.W.2d 862, 867 (Iowa App. 1985); Iowa Code § 96.5-1-d. Unemployment insurance benefits are not intended to substitute for health or disability benefits. White v. Employment Appeal Board, 487 N.W.2d 342 (Iowa 1992). Even though the administrative law judge sympathizes with the claimant's plight, the administrative law judge does not have discretion to rule contrary to the law. Lenning v. Iowa Dept. of Transp., 368 N.W.2d 98 (Iowa 1985). For the period the claimant is seeking unemployment insurance benefits, at least through the date of the hearing, he was under sufficient work restrictions as would preclude him from returning to his regular work duties. He is therefore not eligible to receive unemployment insurance benefits for that period.

If upon the expiration of the leave of absence or upon the doctor's release of the claimant to full work duties the claimant declines to return to the employer, causing a voluntary quit, or the employer declines to reemploy the claimant, causing a discharge, a full separation from employment will have occurred, necessitating further review by the Claims Section. If either party believes the separation has become permanent, they should notify the Agency Claims Section or a local Agency office representative and indicate a further determination may be necessary.

## **DECISION:**

The representative's October 10, 2008 decision (reference 01) is affirmed as modified. The claimant was not able and available for work effective September 12, 2008 until such time as he is released by his doctor without restriction. The period of temporary separation is a period of voluntary unemployment not attributable to the employer. The claimant is not qualified to

receive unemployment insurance benefits for the period from September 12, 2008 until such time as he demonstrates he has been released by his doctor to full work duties.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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