

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROSS L ONKEN**  
Claimant

**APPEAL NO. 12A-UI-11413-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA DEPT OF TRANSPORTATION**  
Employer

**OC: 08-12-12**  
**Claimant: Appellant (4)**

Iowa Code § 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the September 12, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on October 17, 2012. The claimant did participate. The employer did participate through Deb Homewood, supervisor, and Dana McKenna, employee relations manager.

**ISSUE:**

Is the claimant able to and available for work?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a driver's license clerk, full-time, beginning March 18, 2008, through September 4, 2012, when he voluntarily quit. The claimant had asked for and received a medical leave of absence for a non-work-related condition from July 16, through July 26. The claimant was not able to and available for work during that time period. The claimant currently has no medical conditions that prevent him from working.

**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 for the period from July 16, 2012 through July 26, 2012.

Iowa Code § 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 treat a non-work-related medical condition. He was not able to and available for work during that time period. He is now currently able to and available for work. Accordingly, benefits are denied for the period from July 16, 2012 through July 26, 2012. Benefits are allowed for the period after his separation, provided he is otherwise eligible. See Appeal Number 12A-UI-11414-H2T for a decision on his separation from employment.

**DECISION:**

The September 12, 2012, reference 01, decision is modified in favor of the appellant. The claimant is not able to work and available for work effective July 16, 2012 through July 26, 2012. The claimant is able to and available for work after July 26 and benefits are allowed, provided he is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/kjw