

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ADAM R HUGHES
Claimant

APPEAL NO. 10A-UI-10612-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**ABM JANITORIAL SERVICES
NORTH CENTRAL**
Employer

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

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

STATEMENT OF THE CASE:

Adam R. Hughes (claimant) appealed a representative's July 26, 2010 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits in connection with ABM Janitorial Services North Central, Inc. (employer). Hearing notices were mailed to the parties' last-known addresses of record for a telephone hearing to be held on September 16, 2010. The claimant failed to respond to the hearing notice and provide a telephone number at which he could be reached for the hearing and did not participate in the hearing. The employer responded to the hearing notice and indicated that Deniece Norman of Employer's Edge would participate as the employer's representative with one other witness. When the administrative law judge contacted Ms. Norman for the hearing, she agreed that the administrative law judge should make a determination based upon a review of the available information that would include a slight modification of the decision with a remand. Based on a review of the information in the administrative file 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 on December 14, 2009. He worked part-time (about 12 hours per week) doing evening janitorial work. He also had full-time employment with another employer. On May 14 he was laid off from his regular full-time employer. He determined to take a temporary full-time job out of town, which would mean he would not be able to work his part-time job for the employer during that period. As a result, on May 20 he submitted a request for a leave of absence from this employer, which request was granted. The initial term for the leave was through June 12; the claimant subsequently requested and the employer granted an extension of the leave through June 25, 2010.

On June 24 the claimant contacted the employer and indicated he was quitting, as he was still working full-time out of town. The majority of the weeks for which the claimant was seeking benefits were after June 24, potentially after being again laid off from his new out-of-town employer.

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); 871 IAC 24.23(10)

The claimant’s at least partial unemployment from the week ending May 22 through June 24 was due to his being on a leave of absence in order to perform work for another employer. For that period, the claimant was therefore not able and available for his work with the employer and not eligible to receive unemployment insurance benefits for that period.

However, the leave of absence ended with the claimant’s quitting of his employment with the employer. The issue as to whether the June 24 separation was disqualifying to the claimant has not been previously reviewed by a claims representative, and the issue was not included in the notice of hearing for this case. Therefore, the administrative law judge does not have jurisdiction to render a decision regarding the separation; the case will be remanded for an investigation and preliminary determination on that issue. 871 IAC 26.14(5). The administrative law judge would observe that there is the potential in this case for the quit to be non-disqualifying to the claimant, as a quit for new employment under Iowa Code § 96.5-1-a, or as a quit of part-time employment under 871 IAC 24.27, either of which would also result in the employer’s account being exempt from charge.

DECISION:

The representative’s July 26, 2010 decision (reference 01) is modified with no immediate effect on the parties. The claimant was not able and available for his regular work effective the week ending May 22 through June 24 because of being on a leave of absence. He is therefore not qualified to receive unemployment insurance benefits for that period. However, the separation on June 24 ended the leave of absence. The matter is remanded to the Claims Section for investigation and determination of the June 24 separation issue.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw