

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JON LOCKEY**  
Claimant

**APPEAL NO: 13A-UI-13221-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CITY OF CEDAR FALLS**  
Employer

**OC: 11/03/13**  
**Claimant: Appellant (1)**

Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the November 27, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 19, 2013. The claimant participated in the hearing with Attorney Benjamin Roth. Colleen Sole, Personnel Specialist, Human Resources Liaison, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the claimant is able and available for work.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was hired as a full-time laborer for City of Cedar Falls May 3, 2004. He suffered a worker's compensation injury September 23, 2010, and worked light duty for the employer until his physician stated he was at maximum medical improvement and gave him a 12 percent impairment rating and permanent restrictions of no hammering/shoveling, repetitious use of his right arm and no lifting of more than 20 pounds August 7, 2013. Shortly after that time the employer made the decision that the claimant could not perform the essential functions of his job and it could no longer accommodate the claimant's restrictions. The employer encouraged him to apply for Family and Medical Leave (FML) and he was approved for FML November 4, 2013 through January 30, 2014. The claimant applied for unemployment insurance benefits with an effective date of November 3, 2013.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is on a voluntary leave of absence (FML).

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.

Because the claimant is on FML until January 30, 2014, he is considered to be on a voluntarily period of unemployment. Additionally, he is still attached to the employer and is not considered able and available for work at this time. Accordingly, benefits must be denied, until there is a separation from this employer, at which time a new determination will be made.

**DECISION:**

The November 27, 2013, reference 01, decision is affirmed. The claimant is on a leave of absence in the form of FML, which is considered a voluntary period of unemployment, and is not considered able to work and available for work until February 1, 2014. Benefits are denied until a determination is made on his impending separation from employment at the conclusion of his FML.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs