

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**MARK R CASE**

Claimant

**APPEAL 16A-UI-06181-JCT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HEARTLAND EXPRESS INC OF IOWA**

Employer

**OC: 05/08/16**

**Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Able and Available

Iowa Admin. Code r. 871-24.22(2)j – Benefit Eligibility Conditions – Leave of Absence

Iowa Admin. Code r. 871-24.23(10) – Availability Disqualifications – Leave of Absence

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the May 27, 2016 (reference 01) unemployment insurance decision that denied benefits based. The parties were properly notified about the hearing. A telephone hearing was held on June 21, 2016. The claimant participated personally. Although properly notified for the hearing, the employer did not furnish a phone number for itself or representative to participate. Department Exhibit D-1 was admitted into evidence. The administrative law judge took official notice of the administrative record, including fact-finding documents. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Is the claimant able to and available for work?

Is the claimant on an approved leave of absence?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began employment for this employer in 2011, as a full-time, over-the-road truck driver, and last performed work on approximately February 10, 2016. The claimant discontinued performing work upon having an accident while operating a company truck, in which he either “fell asleep or passed out”, causing injury to himself and damage to the vehicle. The claimant was placed on a medical leave of absence through FMLA and has been diagnosed with sleep apnea. The claimant’s leave of absence expired in May 2016 and the claimant has remained on a leave of absence with the employer because his driver’s license has been suspended for six months by the Department of Transportation due to medical issues (Claimant’s Exhibit A). The claimant opened his unemployment claim in May 2015. The claimant’s treating physician intends to release the claimant to work without restrictions in August 2016, which will coincide with the expected reinstatement of his driver’s license. The claimant has also recently learned that a worker’s compensation claim has been initiated and is currently under review.

The employer did not attend the hearing or submit a written statement in lieu of participation. There was no evidence furnished that the claimant was either disciplined or discharged for the February 2016 accident, or has been separated permanently. The claimant has been informed by the employer that he can return to his job once his license is reinstated.

### **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 because he is on an approved leave of absence.

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".

Iowa Admin. Code r. 871-24.22(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.

Iowa Admin. Code r. 871-24.23(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.

Iowa Employment Security Law does not allow benefit payments to an individual who is on a leave of absence and considers him unavailable for work. Due to a medical condition which triggered the claimant to have an accident in a work vehicle, the claimant went on a medical leave beginning in February 2016, and remains on a leave of absence with the employer until he is released by his doctor, and can have his driver's license reinstated. The administrative law judge is sympathetic to the financial struggles that can occur when a person is on a leave of absence and not earning wages. However, based on the evidence presented, the claimant is currently on a leave of absence, and cannot perform his job duties without release from his doctor and have his license reinstated. Accordingly, benefits are denied at this time.

**NOTE TO CLAIMANT:**

You may find additional information about food, housing, and other resources by dialing 211 or at <http://www.211.org/>.

**DECISION:**

The May 27, 2016 (reference 01) decision is affirmed. The claimant is not able to work and available for work effective May 8, 2016, due to being on an approved leave of absence that began in February 2016. Benefits are withheld until such time as the claimant makes himself available for work to the extent he was available during the base-period history.

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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

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