

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JULIO D GUERRA MARROQUIN
Claimant

APPEAL NO. 07A-UI-04859-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**CARGILL MEAT SOLUTIONS
CORPORATION**
Employer

**OC: 04/08/07 R: 03
Claimant: Appellant (2)**

871 IAC 24.23(10) – Leave of Absence
871 IAC 24.1(113) – Layoff

STATEMENT OF THE CASE:

Julio Guerra Marroquin filed a timely appeal from the May 11, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on May 31, 2007. Mr. Guerra Marroquin participated. The employer provided a telephone number for the hearing, but the employer representative was not available at that number at the time of the hearing and did not participate. Spanish-English interpreter Susan Jaquez assisted with the hearing.

ISSUE:

Whether the claimant requested a leave of absence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Julio Guerra Marroquin commenced his full-time employment with Cargill Meat Solutions on October 16, 2001. On January 5, 2005, Mr. Guerra Marroquin underwent back surgery prompted by a workplace injury. Mr. Guerra Marroquin continued in the employment after the injury, but continued to experience pain. On April 11, 2007, a doctor imposed permanent work restrictions that restricted Mr. Guerra Marroquin from lifting more than 20 pounds and restricted him from kneeling or squatting. Mr. Guerra Marroquin's position at Cargill had involved loading 30-pound boxes onto pallets. In light of the permanent medical restrictions, the employer notified Mr. Guerra Marroquin that the employer did not have any work available for him at that time. The employer imposed a medical leave until such time as the employer had work available that would meet the medical restrictions. Mr. Guerra Marroquin did not request a medical leave of absence.

Mr. Guerra Marroquin continued off work until May 14, when he returned to full-time employment at Cargill. Mr. Guerra Marroquin continues in the employment with Cargill.

REASONING AND CONCLUSIONS OF LAW:

A claimant will be disqualified for benefits for being unavailable for work if the claimant requested and was granted a leave of absence. Any such period is deemed to be a period of voluntary unemployment and the claimant shall be considered ineligible for benefits for such period. 871 IAC 24.23(10).

A layoff is a suspension from pay status initiated by the employer without prejudice to the worker and includes temporarily furloughing employees and/or placing employees on unpaid vacations. 871 IAC 24.1(113)(a).

An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated. Iowa Code section 96.19(38)(c).

The employer did not participate in the hearing and the evidence is limited to the testimony of the claimant. The evidence in the record establishes that Mr. Guerra Marroquin did not in fact request a leave of absence. The evidence indicates instead that the employer temporarily laid Mr. Guerra Marroquin off until the employer had work that would meet medical restrictions that were based on a work related injury. The employer had a duty to reasonably accommodate Mr. Guerra Marroquin with comparable work. See Sierra v. Employment Appeal Board, 508 N.W. 2d 719 (Iowa 1993). Mr. Guerra Marroquin is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Guerra Marroquin.

DECISION:

The Agency representative's May 11, 2007, reference 01, decision is reversed. The claimant did not request a leave of absence. The claimant was temporarily unemployed pursuant to a temporary lay-off. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs