**IOWA WORKFORCE DEVELOPMENT**
**Unemployment Insurance Appeals Section**
**1000 East Grand—Des Moines, Iowa 50319**
**DECISION OF THE ADMINISTRATIVE LAW JUDGE**
68-0157 (7-97) – 3091078 - EI

**Appeal Number:**         **04A-UI-11505-AT**
**OC:  04-11-04          R:  02**
**Claimant:  Appellant  (4)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor— Lucas Building, Des Moines, Iowa 50319***.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

**DANIEL J LETO**
**204 E LALLY ST**
**DES MOINES  IA  50315**

STATE CLEARLY
1.  The name, address and social security number of the claimant.
2.  A reference to the decision from which the appeal is taken.
3.  That an appeal from such decision is being made and such appeal is signed.
4.  The grounds upon which such appeal is based.

**DIAZ CONSTRUCTION COMPANY INC**
**705 VIRGINIA**
**KANSAS CITY  MO  64106**

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development.  If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.  It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

Section 96.4-3 – Eligibility for Benefits

STATEMENT OF THE CASE:

Daniel J. Leto filed a timely appeal from an unemployment insurance decision dated October 12, 2004, reference 02, which imposed an open-ended denial of benefits beginning September 19, 2004 upon a finding that Mr. Leto was on leave of absence.  After due notice was issued, a telephone hearing was held November 17, 2004 with Mr. Leto participating. Exhibit A was admitted into evidence on his behalf.  Human Resources Director Sara Nelson participated for the employer, Diaz Construction Company, Inc.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Daniel J. Leto took vacation the week of September 19 through 25, 2004. He returned to work the following week. He filed a claim for benefits under the mistaken belief that the employer would not contest his request for benefits.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the open-ended denial of benefits is accurate. It is not

Iowa Code Section 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".

An individual on vacation or on a leave of absence is considered to be unavailable for work. The evidence in this record establishes that Mr. Leto was on vacation for one week, September 19 through 25, 2004. The earlier decision must be modified because it imposes an open-ended denial of benefits.

DECISION:

The unemployment insurance decision dated October 12, 2004, reference 02, is modified. Benefits are withheld for the week of September 19 through 25, 2004. The claimant is entitled to receive unemployment insurance benefits thereafter, provided he is otherwise eligible.

b/b