

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KENNETH O PERDUE
Claimant

APPEAL NO: 11A-UI-16449-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

R C MOORE INC
Employer

OC: 12/12/10
Claimant: Respondent (4/R)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

R C Moore (employer) appealed a representative's December 22, 2011 decision (reference 05) that concluded Kenneth Perdue (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 25, 2012. The claimant participated personally. The employer participated by Debora Bouscher, Human Resources Supervisor; Paul Walzer, Director of Safety; and Jim Pear, Terminal Manager.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked for the employer from January 24, 2011, to August 7, 2011. On August 7, 2011, the claimant asked for a leave of absence to care for his mother. The claimant cared for his mother through January 1, 2012. On January 22, 2012, his mother fell and broke her hip. She had surgery on January 25, 2012. The claimant hopes to become a full-time student on February 1, 2012. The claimant will not have to care for his mother when and if an aide is provided by his mother's insurance.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the claimant is able and available for work as of January 1, 2012.

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.

When an employee requests and is granted a leave of absence he is considered to be unavailable for work. The claimant took time away from work to care for his mother. He is considered to be unavailable for work from August 7 through December 31, 2011. The claimant is disqualified from receiving unemployment insurance benefits for that period due to his unavailability for work. He is qualified to receive unemployment insurance benefits as of January 1, 2012.

The claimant's and the employer's testimony is inconsistent. The administrative law judge finds the claimant's testimony to be less credible because his testimony was inconsistent.

The issue of whether the claimant is able and available for work after his mother's surgery and when and if he becomes a full-time student is remanded for determination.

DECISION:

The representative's December 22, 2011 decision (reference 05) is modified in favor of the appellant. The claimant is qualified to receive unemployment insurance benefits as of January 1, 2012. He is disqualified from receiving unemployment insurance benefits from August 7 through December 31, 2011.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs