

**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 - E1**

**JOHN A WULFF
226 – 45TH ST
MOLINE IL 61265**

**CENTER OF ALCOHOL/DRUG SVCS INC
PO BOX 3278
DAVENPORT IA 52808 3278**

**Appeal Number: 05A-UI-01249-DWT
OC: 12/26/04 R: 12
Claimant: Appellant (1/R)**

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.

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.

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 – Able to and Available for Work

STATEMENT OF THE CASE:

John A. Wulff (claimant) appealed a representative's January 26, 2005 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits as of December 26, 2004, because he requested and Center of Alcohol/Drug Services, Inc. (employer) granted a leave of absence. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 23, 2005. The claimant participated in the hearing. Tony Hoenig, the financial officer, appeared on the employer's behalf. 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.

ISSUE:

Did the claimant request a leave of absence?

Is the claimant eligible to receive unemployment insurance benefits as of December 26, 2004?

FINDINGS OF FACT:

The claimant started working for the employer on February 14, 2001. The claimant worked as a full-time case manager/counselor. The claimant's job required him to drive. The employer's drug and alcohol policy informs employees that if they inform the employer about a drug or alcohol problem, the employer will continue the employee's employment while they seek treatment. The employee, however, cannot work while they are in treatment. The employer considers the employee to be on a leave of absence while in treatment, but upon successfully completing treatment the employer allows the employee to return to work.

On December 14, 2004, the claimant informed the employer he had been charged with a DUI. The claimant indicated he wanted to go to treatment and planned to return to work after successfully completing the treatment. The claimant understood he was disqualified from working until he successfully completed his treatment. The employer considered the claimant to have requested a leave of absence. No date as to when the leave of absence ended was determined. The employer considered the claimant to be on a leave of absence until he provided the employer with proof he had successfully completed his treatment.

The claimant established a claim for unemployment insurance benefits during the week of December 26, 2004. When the claimant initially talked to the employer on December 14, 2004, the claimant did not realize how long it would take him to complete his treatment and then be granted a work permit so he could drive, as his job required him to do.

As of February 23, 2005, the claimant does not intend to return to work for the employer. The claimant believed he would complete his treatment on February 24, 2005. As of February 23, 2005, the employer still considered the claimant an employee who was on a leave of absence.

REASONING AND CONCLUSIONS OF LAW:

When a claimant requests and is granted a leave of absence, the claimant is considered to be voluntarily unemployed and is ineligible to receive unemployment insurance benefits. Iowa Code §96.4-3, 871 IAC 24.23(10). On December 14, 2004, the claimant understood he could not continue to work for the employer because of the DUI charge. The claimant acknowledged he had a substance abuse problem and wanted to go to treatment. As of December 14, 2004, the claimant planned to return to work after he successfully completed his treatment. Even though the claimant may not have specifically asked for a leave of absence, his actions indicated he wanted a leave of absence so he could enter a treatment program and then return to work for the employer. As of the date of the hearing, the claimant had not yet finished his treatment program. Since the leave of absence was indefinite and the claimant had not yet asked the employer when he could return or tell the employer he no longer wanted the leave of absence, a preponderance of the evidence indicates the claimant has been on a leave of absence since December 14, 2004. This means the claimant is not eligible to receive unemployment insurance benefits as of December 26, 2004. This disqualification continues until the claimant reopens his claim and establishes he is no longer on a leave of absence because he has successfully completed his treatment.

On February 23, 2005, the claimant testified that he has no intention of returning to work for the employer. If this is true, the Claims Section must investigate the reasons for the employment separation. Therefore, this matter is remanded to the Claims Section to investigate and make a

written decision as to whether the claimant is qualified to receive unemployment insurance benefits if he has no intention of returning to work for the employer.

DECISION:

The representative's January 26, 2005 decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits as of December 26, 2004, because he requested and was granted an indefinite leave of absence on December 14, 2004. The claimant's ineligibility continues until he reopens his claim and establishes that he is no longer on a leave of absence. The issue of whether the claimant is qualified to receive unemployment insurance benefits as of February 23, 2005 is remanded to the Claims Section to investigate and make a written decision concerning the claimant's decision that he was not going to return to work for the employer.

dlw/kjf