

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KOBY HELMLE**  
Claimant

**APPEAL NO. 09A-UI-10520-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ACCESS DIRECT TELEMARKETING INC**  
Employer

**Original Claim: 06/14/09  
Claimant: Appellant (2)**

871 IAC 24.23(10) - Voluntary Leave of Absence

**STATEMENT OF THE CASE:**

Koby Helmle (claimant) appealed an unemployment insurance decision dated July 22, 2009, reference 01, which held that he was not eligible for unemployment insurance benefits because he voluntarily requested a leave of absence with Access Direct Telemarketing, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 10, 2009. The claimant participated in the hearing. The employer did not comply with the hearing notice instructions and did not call in to provide a telephone number at which a representative could be contacted, and therefore, did not participate. Based on the evidence, the arguments of the party, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

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

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a full-time telephone sales representative from December 17, 2007 through July 21, 2009, when he quit for another job. However, prior to leaving, the claimant was forced to take a leave of absence. His sales conversion was at 14 percent, which is below the required standard of 17 percent. The claimant's supervisor told him to take a two-week leave of absence or he would be fired. Consequently, he took a leave of absence for the two-week period ending June 27, 2009.

**REASONING AND CONCLUSIONS OF LAW:**

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

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".

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.

The claimant has the burden of proof in establishing his ability and availability for work. Davoren v. Iowa Employment Security Commission, 277 N.W.2d 602 (Iowa 1979). He was forced to take a two-week leave of absence or he would have been discharged. Consequently, the claimant was available to work for the two-week period ending June 27, 2009 and qualifies for unemployment insurance benefits.

**DECISION:**

The unemployment insurance decision dated July 22, 2009, reference 01, is reversed. The claimant was available to work for the two-week period ending June 27, 2009 and qualifies for benefits for that same time, provided he is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/kjw