

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ALFREDO RODRIGUEZ**  
Claimant

**APPEAL NO. 09O-UI-10796-S**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TITAN TIRE CORPORATION**  
Employer

**Original Claim: 04/12/09  
Claimant: Appellant (4)**

Section 96.5-2-a – Discharge  
871 IAC 22(2)j(1)-(3) – Leave of Absence

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated May 12, 2009, reference 02, that held the claimant was not discharged for misconduct on April 16, 2009, and that allowed benefits . After a hearing, an ALJ issued a decision on June 23, 2009 that disqualified the claimant (Appeal Number 09A-UI-07288-S2T).

After a claimant appeal, the Employment Appeal Board remanded this matter for hearing that was scheduled for August 17, 2009. Prior to the hearing, the claimant's attorney, Mark Sherinian, advised that he and the employer's attorney, Gene LaSuer, had reached a settlement regarding this matter.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge, having considered the evidence in the record, finds: The claimant separated from employment on April 16, 2009 due to an issue regarding his authorization to work in the United States. Although the claimant filed an unemployment claim effective April 12, 2009, he has not claimed for nor has he received any benefit. The claimant and employer have reached a settlement to pay the claimant compensation during his period of absence from the employer with the understanding he will return to work on August 17, 2009. Should the parties fail to implement the agreement, the claimant is not disqualified from receiving benefits during the period of his leave.

**REASONING AND CONCLUSIONS OF LAW:**

871 IAC 24.22(2)j(1)(2)(3) provides:

Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly

and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

The administrative law judge concludes the employer and the claimant agree that he was on an approved leave of absence from employment during the period from April 16, 2009 to August 17, 2009, and no disqualification is imposed pursuant to a settlement agreement.

Should the claimant claim for benefits during his leave, the compensation is deductible from any benefit he claims and receives. Should the employer fail to pay the agreed compensation during the leave, the claimant is entitled to retroactive benefits for the leave period.

**DECISION:**

The department decision dated May 12, 2009, reference 02, is modified. The claimant was not discharged from employment on April 16, 2009, but he was placed on an approved leave of absence until his return to work on August 17, 2009 by agreement of the parties. The separation period is not disqualifying. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/kjw