

**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**

**CHADLEON D COOPER  
204 N 2<sup>ND</sup> ST  
MISSOURI VALLEY IA 51555**

**DINA G CORPORATION  
FOOD LAND SUPER MARKETS  
5<sup>TH</sup> & LINCOLNWAY  
WOODBINE IA 51579**

**Appeal Number: 05A-UI-05665-JTT  
OC: 05/01/05 R: 01  
Claimant: Respondent (5R)**

**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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

871 IAC 24.22(2)(j) – Reemployment at the End of a Negotiated Leave of Absence

**STATEMENT OF THE CASE:**

Dina G Corporation filed a timely appeal from the May 18, 2005, reference 03, decision that allowed benefits. After due notice was issued, a hearing was held on June 15, 2005. Co-Owner Dina Corbett represented the employer. Chadleon Cooper participated and presented additional testimony through Alma Cooper.

**FINDINGS OF FACT:**

The administrative law judge has carefully reviewed all of the evidence in the record. Unfortunately, the administrative law judge is confronted with a situation where neither party is an especially reliable historian. With that in mind, the administrative law judge makes the following findings of fact: Chadleon Cooper was employed by Dina G Corporation as a part-time meat wrapper through March 15, 2005. Mr. Cooper suffers from anxiety and

depression and takes prescription medication for both. The employer was aware of Mr. Cooper's mental health issues, and believed Mr. Cooper to be a very good and conscientious worker. The employer conveyed to Mr. Cooper on multiple occasions that it would take no action negatively impacting his employment based on his mental health issues. Mr. Cooper had a history of being frequently absent due to mental illness.

On March 4, 2005, Mr. Cooper was admitted to the hospital due to pneumonia and dehydration. On March 5, Mr. Cooper's wife went to the store and spoke with co-owner Ed Corbett and another senior employee and advised the employer that Mr. Cooper had been admitted to the hospital. Mr. Corbett advised Mrs. Cooper to tell Mr. Cooper not to worry, that the employer just wanted him, to get better, and that as soon as he was able to return to work, his position would be waiting for him. On March 7, Mr. Cooper was released from the hospital. Mr. Cooper continued to recuperate at home, and continued to take antibiotics and other medication to address the pneumonia. Mr. Cooper's doctor advised Mr. Cooper that he would be unable to return to work until March 15. On March 15, Mr. Cooper's spouse contacted the employer to let the employer know she was having difficulty waking Mr. Cooper and that he would be late to work. The person with whom Mrs. Cooper spoke advised Mrs. Cooper that Mr. Cooper had been discharged and that the employer had already replaced him.

#### REASONING AND CONCLUSIONS OF LAW:

The evidence in the record establishes that on March 5, 2005, the date upon which Mrs. Cooper spoke with Mr. Corbett, Mr. Cooper commenced a period of indefinite leave pursuant to an approved leave of absence. The question for the administrative law judge is whether the evidence in the record establishes that Mr. Cooper failed to return at the end of the leave of absence or whether the employer failed to reemploy Mr. Cooper at the end of the approved 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. 871 IAC 24.22(2)(j). If at the end of a period of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits. 871 IAC 24.22(2)(j)(1). On the other hand, 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. 871 IAC 24.22(j)(2).

Having listened to and carefully considered the testimony of the three witnesses who testified at the hearing, the administrative law judge concludes the testimony provided by Mrs. Cooper is most reliable regarding the events leading up to the separation from the employment. The evidence in the record indicates that when Mr. Cooper was ready to return to work at the end of the negotiated and approved leave of absence, Mrs. Cooper was advised by a person she believed to be Mrs. Corbett that Mr. Cooper's employment had been terminated. Mrs. Cooper conveyed this information to Mr. Cooper. Mr. and Mrs. Corbett were unaware that a member of their staff had conveyed to Mrs. Cooper that Mr. Cooper had been discharged. When Mr. Cooper subsequently failed to reappear for work, the employer assumed he had quit and hired a replacement.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that the employer failed to reemploy Mr. Cooper at the end of the negotiated leave of absence. Mr. Cooper is considered laid off and is eligible for benefits,

provided he is otherwise eligible. The employer may be charged for benefits paid to Mr. Cooper.

The evidence in the record raises the further issue of whether Mr. Cooper is able and available for work. A person who is otherwise eligible for benefits, must be able and available for work and earnestly and actively engaged in a search for work to continue eligibility for benefits. See Iowa Code section 96.4(3). This matter will be remanded to the fact finder for a determination of whether Mr. Cooper has been and continues to be both able and available for work.

**DECISION:**

The Agency representative's decision dated May 18, 2005, reference 03, is modified as follows. The employer failed to reemploy the claimant at the end of a period of negotiated leave of absence. The claimant is, therefore, considered laid off. The claimant is eligible for benefits, provided he is otherwise eligible. The employer may be charged for benefits paid to the claimant. The matter is remanded to the fact finder for a determination of whether the claimant has been able and available for employment since establishing his claim for benefits, and whether he is presently able and available for work.

jt/pjs