

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEREMY D HENDERSON
Claimant

APPEAL NO. 08A-UI-05136-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

D H BLATTNER & SONS INC
Employer

OC: 03-09-08 R: 02
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Able and Available
Iowa Code § 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 20, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on June 12, 2008. The claimant did participate. The employer did not participate.

ISSUE:

Did the claimant voluntarily leave work to take a leave of absence?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a lead man full time beginning August 8, 2006 through February 24, 2008 when he took time off to return to Iowa. He returned to work on May 12 and remains employed to date of hearing.

The claimant finished a job in Texas on February 24 and told the superintendent that he wanted to return to Iowa and take some time off until a job began again in Iowa. There was continued work available for the claimant in Texas at another job site. The superintendent told the claimant he could leave and go back to Iowa until the job site in Iowa started working. The claimant requested and was granted the time off. The claimant alleges that the superintendent told him that he would be put down as a temporary layoff, but the claimant also acknowledges that continued work was available for him in Texas. The claimant was off work for two months until the job in Iowa began.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work from February 24, 2008 until May 12, 2008.

Iowa Code § 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 24.22(2)j(1)(2) provides:

Benefits 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.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

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.

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 requested and was given a leave of absence to return to Iowa. The claimant had continued work available to him in Texas but chose not to work but to return to Iowa until a job began in Iowa. It is not up to the employer to determine if the claimant is eligible for unemployment insurance benefits. Since the claimant had work available to him, but chose to take time off, he is not considered as able to and available for work during that period. Accordingly, benefits are denied.

DECISION:

The May 20, 2008, reference 01, decision is affirmed. The claimant was on a leave of absence from February 24, 2008 through May 12, 2008. Benefits are denied.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css