

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALLEN, LARRY, L
Claimant

APPEAL NO. 13A-UI-00714-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACE LOGISTICS LLC
Employer

OC: 12/09/12
Claimant: Appellant (1)

Iowa Code Section 96.4(3) – Able & Available
871 IAC 24.23(10) – Leave of Absence

STATEMENT OF THE CASE:

Larry Allen filed a timely appeal from the January 14, 2013, reference 03, decision that denied benefits effective December 9, 2012 based on an agency conclusion that he was not able and available to work. After due notice was issued, a hearing was held on February 18, 2013. Mr. Allen participated. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate.

ISSUE:

Whether Mr. Allen has met the work ability and work availability requirement since he established his claim for unemployment insurance benefits on December 9, 2012. The administrative law judge concludes that Mr. Allen is on a leave absence and is not available for work within the meaning of the law due to his failure to obtain the nighttime driving lenses that he needs to perform work in his usual occupation.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Larry Allen established a claim for unemployment insurance benefits that was effective December 9, 2012. Mr. Allen most recently performed work for Ace Logistics, L.L.C. Mr. Allen's supervisor at Ace Logistics was Andy Gillaspey.

On December 4, 2012, Mr. Allen was making a delivery with the employer's semi tractor-trailer, when the tractor-trailer caught fire. Mr. Allen's personal belongings, including his eyeglasses and commercial driver's license, were consumed by fire. At the time of the fire, Mr. Allen was wearing a pair of prescription shaded and polarized glasses that he uses for daytime driving. The glasses that were destroyed in the fire were the prescription polarized glasses Mr. Allen uses for nighttime driving. Mr. Allen's D.O.T. authorization to operate a tractor-trailer is conditioned upon Mr. Allen wearing the appropriate prescription lenses. The employer's insurance company refused to reimburse Mr. Allen for his personal property loss. The employer also refused to reimburse Mr. Allen for his personal property loss. Shortly after the fire incident,

Mr. Allen obtained a duplicate of his CDL. Mr. Allen lacked the funds to replace his eyeglasses, for which Mr. Allen had paid \$325.00.

Within a week of the truck fire, Mr. Gillaspey told Mr. Allen that he had a replacement truck for Mr. Allen to operate. Mr. Allen told the employer he could not operate the truck without his nighttime driving glasses. Mr. Allen was concerned that he would receive a citation from law enforcement if he operated the employer's truck without the appropriate nighttime prescription lenses. Mr. Gillaspey told Mr. Allen that his position would be waiting for him. Mr. Gillaspey and Mr. Allen agreed that Mr. Allen would be considered "laid off" until he obtained a replacement pair of nighttime driving lenses.

Mr. Allen plans to return to work at Ace Logistics and has not looked for other employment since he established his claim for unemployment insurance benefits. Mr. Allen has not obtained a new pair of nighttime driving glasses and has not returned to Ace Logistics. Mr. Allen and his spouse have been residing with Mr. Allen's father.

REASONING AND CONCLUSIONS OF LAW:

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 weight of the evidence indicates that Mr. Allen has been on an approved leave of absence since he established his claim for benefits. It is a leave of absence, rather than a layoff, since the employer has had work available for Mr. Allen since he filed his claim for unemployment insurance benefits. The fact that Mr. Allen has not sought other employment further indicates he is on a leave of absence. Mr. Allen has known since he filed his claim for benefits that the only thing standing in the way of him returning to work at Ace Logistics is his lack of nighttime driving glasses. This is a matter that a reasonable person would conclude is within Mr. Allen's control, one way or another. Mr. Allen is not available for work within the meaning of the law and, therefore, is not eligible for unemployment insurance benefits. Benefits are denied effective December 9, 2012 and the disqualification continues as of the February 18, 2013 appeal hearing.

DECISION:

The Agency representative's January 14, 2013, reference 03, decision is affirmed. The claimant is on an approved leave of absence and is not available for work within the meaning of the law. Benefits are denied effective December 9, 2012 and the disqualification continues as of the February 18, 2013 appeal hearing.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs