

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DOUG A BERNHARD
Claimant

APPEAL NO: 12A-UI-03340-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**BUFFALO GAP INSTRUMENTATION
& ELECTRICAL CO INC**
Employer

OC: 04/26/12
Claimant: Appellant (2)

Section 96.5-3 – Able and Available
871 IAC 24.22 j (1), (2), (3) – Leave of Absence
871 IAC 24.1(113)a – Layoff

STATEMENT OF THE CASE:

The claimant appealed a department decision dated March 26, 2012, reference 01, that held he was granted a leave of absence that is a voluntarily period of unemployment effective February 5, 2012, and benefits are denied. A telephone hearing was held on April 17, 2012. The claimant, and his Attorney Jason Lehman, participated. The employer did not participate. Claimant Exhibit A was received as evidence.

ISSUES:

Whether the claimant is able and available for work.

Whether claimant is on a leave of absence.

Whether claimant was laid-off for lack of work.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witness, and having considered the evidence in the record, finds: The claimant began work for the employer on April 1, 1997 and last worked for the employer as a full-time field office assistant on February 2, 2012. Although claimant experienced an episode of renal failure in January 2012, he was able to continue his work during a brief hospitalization. On February 2, the employer terminated his employment due to a reduction on force (ROF) with the eligibility for re-hire. The employer has not re-employed claimant as of the date of this hearing. He is physically able and available for work.

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 24.22(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 claimant was not placed on a leave of absence for his health issue, and he is able and available for work. The fact that claimant was able to continue his work during a brief hospitalization period is evidence there is no availability disqualification issue.

871 IAC 24.1(113)a provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status (lasting or expected to last more than seven consecutive calendar days without pay) initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of

laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

The administrative law judge further concludes the claimant was laid off for lack of work on February 2, 2012 that is an employment separation for no disqualifiable reason.

The employment termination is considered a layoff (ROF) as claimant is eligible for re-hire.

DECISION:

The department decision dated March 26, 2012, reference 01, is reversed. The claimant was laid-off due to a reduction on force effective February 2, 2012. He is able and available for work. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css