

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BILLY G SMITH
Claimant

APPEAL NO: 10A-UI-11021-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY
Employer

OC: 06/20/10
Claimant: Respondent (1)

Section 96.4-3 – Able to and Available for Work

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's July 29, 2010 decision (reference 02) that held the claimant eligible to receive benefits and the employer's account subject to charge when the employer did not have work that accommodated the claimant's work restrictions. A telephone hearing was held on September 23, 2010. The claimant participated in the hearing with his attorney, Max Schott. Jenny Mora, the employment manager, appeared on the employer's behalf.

The administrative law judge reopened this matter. The claimant's attorney submitted additional information in an October 6, 2010 letter. On October 18, the employer contacted the administrative law judge to indicate the employer had no objections to admitting the October 6 letter as evidence. The October 6, 2010 letter is identified on Claimant Exhibit A and is admitted as evidence as of October 23.

Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant is eligible to receive benefits as of June 20, 2010.

ISSUES:

Is the claimant ineligible to receive benefits as of June 20 when the employer placed him on a leave of absence?

Is the claimant able to and available for work as of June 20, 2010?

Has the claimant been overpaid any benefits?

FINDINGS OF FACT:

The claimant started working for the employer on December 7, 2009. The claimant worked in the casing department. The employer accommodated the claimant's light-duty work restriction that he received in late March or early April 2010 until June 16, 2010. The employer accommodated the claimant's work restrictions until he received additional restrictions from his personal physician.

On June 15, 2010, the employer informed the claimant his medical issues were not considered work related. The employer then asked the claimant to go to a doctor that he chose. The claimant's physician was to complete paperwork.

Dr. Nisha Patel completed the requested paperwork. Dr. Patel also gave the claimant a work restriction that he was unable to use his right hand, but could stand and bend. The claimant's work required him to use his right hand and the claimant is right-handed. After the employer received Patel's work restriction, which added the restriction of not using his right hand, the employer informed the claimant that the employer did not have any work for the claimant to do. The employer effectively placed the claimant on a leave of absence as of June 17, 2010. The employer told the claimant he could return to work when he was released to work without any work restriction.

The claimant established a claim for benefits during the week of June 20, 2010. Since June 20, the claimant has looked for work in administrative personnel, telemarketing and collections. The claimant has experience in administrative work. (Claimant Exhibit A.) As of September 22, the employer still considered the claimant an employee who is currently on a leave of absence.

The record indicates the claimant filed claims for the weeks ending June 26 though July 24, 2010. With the exception of \$231.00 in benefits (gross payment) the claimant received for the week ending July 24, the rest of the benefits were used to offset a previously established overpayment. The claimant received a total (offset plus payment) of \$2,295.00 in benefits for these weeks.

REASONING AND CONCLUSIONS OF LAW:

In mid-June after the employer informed the claimant his medical issue was not considered a work-related injury, the employer asked the claimant to have his personal physician complete paperwork concerning his work restrictions. The claimant returned his work restrictions from Dr. Nisha Patel that included an additional restriction of not using his right hand. When the employer learned about this additional work restriction, the employer did not have any work for the claimant to do. The employer did not end the claimant's employment, but put him on a leave of absence until he was released without any work restrictions.

Since the claimant did not request a leave of absence and employer placed him on the leave of absence on its own, 871 IAC 24.23(10) does not apply. However, each week a claimant files a claim for benefits, he must be able to and available for work. Iowa Code § 96.4-3. The law presumes a claimant is not available for work if he places undue restrictions on his employability to the type of work he will accept. 871 IAC 24.23(3). Although as of June 20, the claimant is only capable of doing light-duty work, based on his previous work experience he has demonstrated that he has not unduly restricted the type of work he is capable of performing. For unemployment insurance purposes, the claimant has been looking for meaningful employment since June 20, 2010. Therefore, as of June 20, the claimant is eligible to receive benefits. The claimant has not been overpaid any benefits he receive from June 20 through July 24, 2010.

DECISION:

The representative's July 29, 2010 decision (reference 02) is affirmed. After the claimant received another work restriction in mid-June 2010 that he was unable to use his right hand, the employer placed him a leave of absence. Even with the work restrictions from his personal

physician, the claimant looked for meaningful employment in which he has previous work experience until he is able to return to work for the employer. The claimant is eligible to receive benefits as of June 20, 2010. The claimant has not been overpaid any benefits he received from June 20 through July 24, 2010.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css