

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEVE L EISON
Claimant

APPEAL NO. 11A-UI-11684-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST SIDE TRANSPORT INC
Employer

OC: 07/31/11
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant appealed a department decision dated August 26, 2011, reference 01, that held he was not eligible for benefits effective July 31, 2011, because he was voluntarily unemployed due to a leave of absence. A telephone hearing was held on September 28, 2011. The claimant participated. Susan Smith, director of driver services, participated for the employer.

ISSUES:

Whether the claimant is able and available for work.

Whether claimant is on a leave of absence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant began working for the employer as a full-time over-the-road driver on July 24, 2002. He suffered a non-job-related heart attack on July 29, 2011, and he agreed to FMLA for a period of 12 weeks in order to recover. He did not receive an unrestricted released to return to work by his doctor until he returned to full-time work on September 26. He contacted the employer about work at an earlier period, but the employer did not allow his return, due to a lifting restriction that limited his ability to perform all of his job duties.

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 granted a leave of absence (FMLA) for a period of 12 weeks in order to recover from a non-job related heart attack, which is a voluntary period of unemployment beginning July 29, 2011. When he received an unrestricted release to return to work by his doctor, he was returned to employment on September 26.

Claimant is not eligible for benefits during his medical leave of absence until he is able to return to work without any work restriction that would affect his ability to perform all of his job duties as certified by his doctor.

DECISION:

The department decision dated August 26, 2011, reference 01, is affirmed. The claimant is not eligible for benefits, due to a medical leave of absence, beginning July 29, 2011 until such time as he is able and available to perform work. Claimant returned to work on September 26, 2011.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw