

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TON N PHAM
Claimant

APPEAL NO. 14R-UI-08114-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

KCS MERGERCO LLC
Employer

OC: 05/04/14
Claimant: Appellant (1)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Ton Pham (claimant) appealed a representative's May 29, 2014 (reference 01) decision that concluded he was not eligible to receive unemployment insurance benefits due to a leave of absence from KCS Mergerco (employer). Employer is now known as Kansas City Sausage Company and doing business as Pine Ridge Farms. This administrative law judge issued a decision on July 3, 2014 affirming the representative's decision. A decision of remand was issued by the Employment Appeal Board on August 7, 2014. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for August 28, 2014. The claimant participated personally through Phun Nguyen, Interpreter. The employer participated by John Anderson, Human Resources Manager; Christina Nguyen, Interpreter; and Larry Gaskill, Cold Side Superintendent. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant is available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on January 26, 2004 as a full-time belly trimmer. The claimant worked through April 7, 2014. He had chest surgery and took Family Medical Leave from May 5 through August 1, 2014. The claimant's physician told him he could not work from April 7 through June 24, 2014.

On June 24, 2014 the claimant's doctor wrote a note stating the claimant was scheduled to return to work on June 30, 2014. The doctor recommended the claimant go on light-duty work for approximately three weeks. The doctor did not explain which three weeks the claimant should go on light-duty work or what the parameters of the light-duty work should be. The employer explained to the claimant that it could not follow the note because it was unintelligible. The employer required another note from the doctor before the claimant could return to work.

On August 14, 2014 the employer sent the claimant a letter requesting information by August 20, 2014 or the claimant would be terminated. The claimant provided another doctor's note on August 19, 2014 stating he was unable to work at that time. The claimant was not terminated. The claimant plans to see his doctor in the near future. The employer continues to cover the claimant under its benefit plan and is prepared to return him to work as soon as he is released to return by his physician.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the claimant is eligible to receive unemployment insurance benefits.

Iowa Admin. Code r. 871-24.23(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.

When an employee requests and is granted a leave of absence, he is considered to be voluntarily unemployed. The claimant requested a medical leave of absence and the employer granted his request. The request was initiated by the claimant. The leave has been extended to the present day. He is considered to be voluntarily unemployed during the period of the medical leave of absence. The claimant is not eligible to receive unemployment insurance benefits from May 4, 2014 because he was not able and available for work

DECISION:

The representative's May 29, 2014 (reference 01) decision is affirmed. The claimant is disqualified from receiving unemployment insurance benefits because he is not available for work with the employer.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/can