

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN A HOWARD
Claimant

APPEAL NO. 12A-UI-03909-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 02/12/12
Claimant: Respondent (2-R)

871 IAC 24.23(10) – Leave of Absence

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 2, 2012, reference 01, decision that allowed benefits effective February 12, 2012 based on the agency conclusion that the claimant was on a short-term layoff. After due notice was issued, a hearing was held on April 30, 2012. Claimant John Howard did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Dzemel Grcic, Human Resources Clerk, represented the employer. Exhibit One was received into evidence.

ISSUE:

Whether Mr. Howard has been on a leave of absence or a short-term layoff since he established his claim for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: John Howard started working for Tyson Fresh Meats, Inc., in 2010 as a full-time, second-shift, no-jobber and has not separated from the employment. Mr. Howard last performed work for the employer on January 19, 2012. On January 12, 2012, Mr. Howard requested and was approved for a non-work-related medical leave of absence to start January 20, 2012 and to end on April 16, 2012. After Mr. Howard started the leave of absence, the employer agreed to extend the leave of absence to June 11, 2012.

REASONING AND CONCLUSIONS OF LAW:

An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated. Iowa Code Section 96.19(38)(c).

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(1)a, (2) provides:

Benefits 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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Administrative Code rule 871 IAC 24.23(10) provides as follows:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

24.23(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 claimant is not on a temporary layoff. The evidence in the record establishes that the claimant has been on an approved medical leave of absence that he requested and that the employer approved since he established his claim for benefits. The claimant is not eligible for unemployment insurance benefits. Benefits are denied effective February 12, 2012. The disqualification continues as of the April 30, 2012 appeal hearing date.

DECISION:

The Agency representative's April 2, 2012, reference 01, is reversed. The claimant is not on a temporary layoff. Since the claimant established his claim for benefits, he has been on an approved medical leave of absence that he requested and that the employer approved. The claimant is not eligible for unemployment insurance benefits. Benefits are denied effective February 12, 2012. The disqualification continues as of the April 30, 2012 appeal hearing date.

This matter is remanded to the Claims Division for entry of an overpayment decision concerning the benefits the claimant has received since the effective date of the claim.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs