

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RANDALL D SEYMOUR

Claimant

APPEAL NO: 13A-UI-02850-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

UNITED PARCEL SERVICE

Employer

OC: 01/27/13

Claimant: Appellant (4)

Section 96.4-3 – Able and Available
871 IAC 24.22(2)j – Leave of Absence

STATEMENT OF THE CASE:

Randall D. Seymour (claimant) appealed a representative's March 7, 2013 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits in connection with United Parcel Service (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held at 10:00 a.m. on May 1, 2013. The claimant participated in the hearing and was represented by Nathaniel Boulton, Attorney at Law. The employer's representative responded to the hearing notice at 3:02 p.m. on April 30 by faxing in a request for a postponement for a non-emergency reason. The administrative law judge denied the late request. Therefore, the employer did not participate in the hearing. During the hearing, Claimant's Exhibits One and Two were entered into evidence. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was the claimant eligible for unemployment insurance benefits by being able and available for work? Was the period of voluntary unemployment through a leave of absence?

FINDINGS OF FACT:

The claimant started working for the employer on October 3, 2000. He worked part-time (20-25 hours per week) as a preloader at the employer's Des Moines, Iowa terminal. His most recent day of work was January 31, 2012.

The claimant was injured while at work with a different employer on January 27, 2012. He suffered a herniated disc. He was ordered off work by his doctors after the injury. He underwent surgery on February 20, 2012. He received disability benefits through the employer from February 1 through July 31, 2012. He was still under doctor's orders not to return to work until he received a partial release with restrictions on January 29, 2013. The employer informed him at that time that he would need to be able to return to work 100 percent without any work restrictions.

On February 6, 2013 another of the claimant's doctors again took the claimant completely off work. Also on February 6 the employer informed the claimant that he was being placed on a personal medical leave of absence, to be in effect until he could provide a release to return to work that would allow him to perform all of the essential functions of his job. As of the date of the hearing, the claimant was still under the no work restriction, and so has not further attempted to return to work.

REASONING AND CONCLUSIONS OF LAW:

For each week for which a claimant seeks unemployment insurance benefits, he must be able and available for work. Iowa Code § 96.4-3. In general, an employee who is only temporarily separated from his employment due to being on a leave of absence is not "able and available" for work during the period of the leave, as it is treated as a period of voluntary unemployment. 871 IAC 24.22(2); 871 IAC 24.23(10).

The claimant's current unemployment is due to his being on a leave of absence due to a non-work-related medical issue. As the condition causing his temporary unemployment was not related to the work environment, in order to be sufficiently well for the claimant to regain his eligibility status as being able and available for work, he must have a complete recovery to full work duties without restriction. *Hedges v. Iowa Department of Job Service*, 368 N.W.2d 862, 867 (Iowa App. 1985); Iowa Code § 96.5-1-d. Unemployment insurance benefits are not intended to substitute for health or disability benefits. *White v. Employment Appeal Board*, 487 N.W.2d 342 (Iowa 1992). Since the claimant began seeking unemployment insurance benefits he has been under sufficient work restrictions as would preclude him from returning to his regular work duties. He is therefore not eligible to receive unemployment insurance benefits at this time.

DECISION:

The representative's March 7, 2013 decision (reference 02) is modified in favor of the claimant. There has not yet been a full separation from employment. The claimant is on a leave of absence due to a non-work-related medical condition. The claimant is not able and available for work effective January 27, 2013, and the period of temporary separation is a period of voluntary unemployment not attributable to the employer. The claimant is not qualified to receive unemployment insurance benefits until he has been sufficiently released for work.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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