

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANDREW K WARD
Claimant

APPEAL NO: 10A-UI-07849-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 04/18/10
Claimant: Appellant (1/R)

871 IAC 24.23(10) – Leave of Absence

STATEMENT OF THE CASE:

The claimant appealed a representative's May 21, 2010 decision (reference 01) that held him ineligible to receive benefits as of April 18, 2010, because he was on a leave of absence. A telephone hearing was held on July 13, 2010. The claimant participated in the hearing. Mary Fuhrman, the store director, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the claimant eligible to receive benefits when he is on a medical leave of absence?

FINDINGS OF FACT:

The claimant started working for the employer in August 2008. The claimant worked full time. After the claimant's physician informed the claimant he needed back surgery, the claimant requested a leave of absence. The employer granted the claimant a leave of absence. The claimant had surgery in mid-April 2010. After the claimant's doctor released him to return to work the second week of June, the claimant returned to work.

The claimant established a claim for benefits during the week of April 18, 2010.

REASONING AND CONCLUSIONS OF LAW:

Each week a claimant files a claim for benefits, he must be able to be available for work. Iowa Code § 96.4-3. The law provides that when a claimant requests and is granted a leave of absence, the claimant is not eligible to receive benefits because a leave of absence is considered a period of voluntary unemployment. 871 IAC 24.23(10). Additionally, the claimant's physician did not release the claimant to work until the second week of June. As of April 18, 2010, the claimant is not eligible to receive benefits.

The record indicates that after the claimant returned to work, he has not filed weekly claims. An issue of overpayment is remanded to the Claims Section to determine if the claimant received any benefits as April 18 that he was not legally entitled to receive.

DECISION

The representative's May 21, 2010 decision (reference 01) is affirmed. The claimant is not eligible to receive benefit as of April 18, 2010, because he was not able to or available to work. Also, he requested and was granted a medical leave of absence. An issue of overpayment is Remanded to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css