

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

STEVEN D SCHMIDT
2552 SMITH AVE TRLR 122
MARSHALLTOWN IA 50158-9617

SWIFT & COMPANY
c/o EMPLOYERS UNITY INC
PO BOX 749000
ARVADA CO 80006-9000

Appeal Number: 06A-UI-05986-JTT
OC: 05/07/06 R: 02
Claimant: Appellant (5)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

871 IAC 24.22(2)(j) – Leave of Absence

STATEMENT OF THE CASE:

Steven Schmidt filed a timely appeal from the June 2, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on June 27, 2006. Claimant participated. Human Resources Coordinator Aaron Vawter represented the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Steven Schmidt is currently on an approved leave of absence from his employment at Swift & Company. Mr. Schmidt commenced the leave of absence on April 24, 2006 and is expected to return to the employment on July 7, 2006. The leave of absence is based on a diabetic foot ulcer. Mr. Schmidt and the employer both intend for Mr. Schmidt to return to the

employment. Mr. Schmidt has not sought other employment during his leave of absence. Mr. Schmidt is currently not able to work because he has not yet been released by his doctor to return to work.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Schmidt was on an approved leave of absence and was, therefore, voluntarily unemployed and ineligible for benefits.

871 IAC 24.22(2)j(1)(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.

(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.

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.

The parties agree, and the evidence in the record establishes, that Mr. Schmidt commenced an approved leave of absence on April 24, 2006 with an expected return date of July 7, 2006. The leave of absence is a period of voluntary unemployment and Mr. Schmidt is, therefore, disqualified for benefits. There has been no separation from the employment.

DECISION:

The Agency representative's June 2, 2006, reference 01, decision is modified as follows: The claimant did not voluntarily quit the employment, but is on an approved leave of absence, effective April 24, 2006. The leave of absence was a voluntary unemployment and the claimant is not eligible for benefits for the period of the leave of absence.

jt/cs