

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HUMBERTO CRUZ

Claimant

APPEAL NO. 15A-UI-12349-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

1ST CLASS STAFFING INC

Employer

OC: 10/18/15

Claimant: Appellant (1)

IA CR 871 24.23(10) – Approved Leave of Absence

STATEMENT OF THE CASE:

Humberto Cruz, the claimant, filed a timely appeal from a representative's decision dated November 4, 2015 (reference 01) which denied benefits as of October 18, 2015; finding that the claimant was on an approved leave of absence and not available for work. After due notice was provided, a telephone hearing was held on November 21, 2015. The claimant participated. Although duly notified, the employer did not participate.

ISSUE:

At issue is whether the claimant is on an approved leave of absence.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Humberto Cruz began employment with First Class Staffing LLC in October 2014. Mr. Cruz was assigned to work as a material handler/forklift driver at the Jacobson Company, a client of First Class Staffing LLC. Mr. Cruz was working full time on the assignment and was paid by the hour.

Mr. Cruz' last day of work was May 12, 2015. On that date, the claimant suffered a work injury to his elbow and shoulder. He filed a workman's compensation claim. Mr. Cruz spoke with his employers at First Class Staffing LLC and the parties agreed that the company would hold the claimant's job assignment, or a similar job assignment, for him while he was away from work due to his work injury, and that the claimant would be assigned to the same or similar assignment when he was released to return to work. Mr. Cruz wanted to continue in his employment through First Class Staffing LLC at the Jacobson assignment or a similar assignment, and he agreed to return to work when he was released by his physician for the injuries he sustained while injured at work. At the time of hearing, Mr. Cruz continues to wait for a full release from his physician so that he can resume employment through First Class Staffing LLC.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that Humberto Cruz is on an approved leave of absence. It does.

Iowa Admin. Code r. 871-24.22(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.

A leave of absence negotiated with the consent of both parties, the employer and the employee, is deemed a period of voluntary unemployment for the employee; and the individual is considered ineligible for benefits for the period of the leave of absence. 871 IAC 24.22(2)(j). If at the end of a period of a negotiated leave of absence the employer fails to reemploy the employee, the individual is then considered laid off and is eligible for benefits. 871 IAC 24.22(2)(j)(1). Adversely, if the employee fails to return at the end of the leave of absence and subsequently becomes unemployed, the individual is considered as having voluntarily quit and is ineligible for benefits. 871 IAC 24.22(j)(2).

The evidence in the record establishes that Mr. Cruz and First Class Staffing LLC discussed the claimant's status after Mr. Cruz was injured on the job and that the parties agreed that the employer would hold the same or a similar job assignment for Mr. Cruz until he was released by his physician from the workman's compensation injury. Mr. Cruz in turn agreed that he would return to employment with First Class Staffing LLC upon being released by his doctor. The administrative law judge thus concludes that the leave of absence was negotiated with the consent of both parties. Because the claimant is on a negotiated leave of absence, he is

deemed to be voluntarily unemployed within the meaning of the unemployment security law and he is considered ineligible for benefits for the period of the leave of absence. Accordingly, benefits are denied as of October 18, 2015.

DECISION:

The representative's decision dated November 4, 2015 (reference 01) is affirmed. The benefits are denied as of October 18, 2015. The claimant is on a negotiated leave of absence and not available for work within the meaning of the Iowa Employment Security Law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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