

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MELISSA C EISELSTEIN-LAFRENZ
Claimant

APPEAL NO: 09A-UI-15231-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BETTY, NEUMAN, & MCHAHON LLP
Employer

OC: 08/23/09

Claimant: Appellant (1/R)

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

STATEMENT OF THE CASE:

Melissa C. Eiselstein-Lafrenz (claimant) appealed a representative's September 29, 2009 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits in connection with Betty, Newman, & McHahon, L.L.P. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 10, 2009. The claimant participated in the hearing. Rheta Foley 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:

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

FINDINGS OF FACT:

The claimant started working for the employer on November 28, 2005. She works full time as a legal secretary in the employer's law firm, and remains employed in that position. The claimant had a period of leave from her job beginning on or about July 13 when she underwent back surgery on a herniated disc. There was no evidence that the condition was related to her employment. The employer granted her six weeks of paid medical leave, expiring August 23. However, as of August 20 the claimant's doctor still had her on restrictions that precluded her from bending or from lifting more than five pounds. It was not overly unusual for the claimant's regular duties to include handling and lifting files that could weigh more than five pounds. On September 8 the doctor that had imposed the restrictions gave the claimant a release to return to work with no restrictions. She returned to work on September 9. She sought and received unemployment insurance benefits for the period between August 24 and September 12 in which she was not allowed to return to work under the work restrictions.

REASONING AND CONCLUSIONS OF LAW:

For each week for which a claimant seeks unemployment insurance benefits, she must be able and available for work. Iowa Code § 96.4-3. In general, an employee who is only temporarily separated from her 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 her being on a leave of absence due to a non-work-related medical issue. As the condition causing her temporary unemployment was not related to the work environment, in order to be sufficiently well for the claimant to regain her eligibility status as being able and available for work, she 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. The employer is not required to accommodate a temporary disability of this duration for a non-work-related medical issue. 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). For the period the claimant is seeking unemployment insurance benefits she was under sufficient work restrictions as would preclude her from returning to her regular work duties without accommodations. She is therefore not eligible to receive unemployment insurance benefits for that period.

An issue as to whether the claimant received benefits to which she was not entitled and was thus overpaid arose as a consequence of the hearing. This issue was not included in the notice of hearing for this case, and the case will be remanded for an investigation and preliminary determination on that issue. 871 IAC 26.14(5).

DECISION:

The representative's September 29, 2009 decision (reference 01) is affirmed. The claimant was not able and available for work effective August 24, 2009, and the period of temporary separation was a period of voluntary unemployment not attributable to the employer. The claimant is not qualified to receive unemployment insurance benefits for the period from August 24, 2009 through September 12, 2009. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs