

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

KAREN SLEMMONS
Claimant

APPEAL NO: 18A-UI-07446-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ROCKWELL COLLINS INC
Employer

OC: 06/10/18
Claimant: Appellant (4)

871 IAC 24.23(10) – Leave of Absence
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 10, 2018, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 30, 2018. The claimant participated in the hearing. The employer sent an email indicating it was not participating in the hearing.

ISSUE:

The issue is whether the claimant is able and available for work and whether she is on a leave of absence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: At the beginning of June 2018 the claimant decided to take early retirement effective June 30, 2018. The claimant requested and was given a leave of absence because of a status migraine headache and was off on short-term disability June 7, 8, 11 and 12, 2018. She planned to return to work June 13, 2018, but before her 2:30 p.m. shift started a human resources representative called and told the claimant her employment was terminated because she did not have enough vacation or sick leave to cover her leave of absence. The claimant told the human resources representative that she disagreed with her assessment and that Liberty Mutual covered the four days she was off. On June 20, 2018, the claimant received another call from the human resources representative stating her termination of employment had been rescinded and had never been put in the system as a termination. The claimant asked if she could return to work that afternoon but the human resources representative said no. The claimant asked why and was told the employer was going to have a meeting about the situation June 26, 2018, and make a decision. On June 26, 2018, the claimant called the human resources representative and asked what happened at the meeting and was told her employment was not terminated but she could not return to work. She was told the employer was trying to decide how to cover June 13 through June 26, 2018. The human resources representative called the claimant June 27, 2018, and stated she could return to work June 27 and 28, 2018, or officially retire. The claimant decided to make her retirement date June 28, 2018. On June 29, 2018, the

claimant called the human resources representative and an exit interview was conducted. The human resources representative informed the claimant that June 13 through June 28, 2018, would be considered approved time off but she would not be paid for those days. The claimant disagreed with the employer's decision because she wanted to work June 13 through June 28, 2018, but the employer did not allow her to do so and the human resources representative stated the employer had made its decision. The claimant officially retired June 29, 2018.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not able and available for work did take a leave of absence from June 7 through June 12, 2018 but is able and available for work from June 13 through June 28, 2018.

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(2)(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.

Iowa Admin. Code r. 871-24.23(10) provides:

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

The claimant was off work June 7, 8, 11 and 12, 2018, due to a status migraine and was placed on short-term disability and a leave of absence from June 7 through June 12, 2018. She is not considered able and available for work for those dates. She is eligible for partial benefits the weeks ending June 16 and June 23, 2018, because she was able and available for work and her reported wages and vacation pay do not exceed her weekly unemployment insurance benefit amount. She is eligible for benefits the week ending June 30, 2018, because she was not on a leave of absence and was able and available for work but was not allowed to work. Accordingly, benefits are allowed effective the week ending June 16, 2018.

DECISION:

The July 10, 2018, reference 02, decision is modified in favor of the claimant. The claimant is not able and available for work and did take a leave of absence from June 7, 2018 to June 12, 2018. She is eligible for benefits for the three weeks ending June 30, 2018. Benefits are allowed provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/rvs