

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARIA B LAGOS

Claimant

APPEAL NO. 10A-UI-06814-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

FARMLAND FOODS INC

Employer

**Original Claim: 03/28/10
Claimant: Appellant (2-R)**

871 IAC 24.23(10) – Leave of Absence

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated April 29, 2010, reference 02, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on July 1, 2010. The claimant participated. The claimant was represented by Dennis McElwain, attorney at law. The employer notified the administrative law judge prior to the hearing that it would not be participating in the hearing. The record consists of the testimony of Maria Lagos and Claimant's Exhibits A through C. Steven Rhodes served as Spanish interpreter.

ISSUE:

Whether the claimant requested a leave of absence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The claimant began working for the employer as a full-time production worker at its plant in Denison, Iowa, on May 26, 2005. The claimant sustained a work injury on or about November 1, 2007. As a result of the injury, the claimant was taken off work on October 24, 2008. She released by her physician to return to work on February 22, 2010. The claimant had permanent restrictions. She went to the plant and presented her restrictions to her employer and asked to be returned to work. The employer has not returned the claimant to work, even though she believes there are jobs that she could do. The claimant is still an employee of the employer.

REASONING AND CONCLUSIONS OF LAW:

871 IAC 24.1(113)a provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status (lasting or expected to last more than seven consecutive calendar days without pay) initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

The evidence in this case established that it is the employer who has placed the claimant on a leave of absence. The claimant was off work recovering from a work-related injury. Her physician placed her at maximum medical improvement as of February 22, 2010. The claimant then went to the employer and presented her restrictions and asked that she be returned to work. The employer has not put the claimant back to work. The claimant is unemployed due to the employer's action.

Although the representative's conclusion that the claimant was voluntarily unemployed is being reversed, there is still an issue as to whether she is able and available for work given her medical condition. This issue is remanded to the Claims Section for determination, as it was not listed as an issue for this appeal.

DECISION:

The representative's decision dated April 29, 2010, reference 02, is reversed. The claimant was placed on an involuntary leave of absence by the employer. This matter is remanded to the Claims Section to determine if the claimant is otherwise able and available for work.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw