

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARILYN J DUNNING
Claimant

APPEAL NO. 08A-UI-08324-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 07/22/07 R: 03
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Marilyn Dunning filed an appeal from a representative's decision dated September 17, 2008, reference 02, which denied benefits as of February 27, 2008 finding that the claimant requested and was granted a leave of absence and, therefore, was voluntarily unemployed and not available for work. After due notice a telephone conference hearing was scheduled for and held on October 1, 2008. Ms. Dunning participated personally. The employer declined to participate.

ISSUE:

The issue in this matter is whether the claimant is able and available for work and whether the claimant was on an approved leave of absence and thus voluntarily unemployed.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant last worked for this employer on February 27, 2008 when she was injured in a non-work-related accident. Ms. Dunning held the position of full time CNA. Ms. Dunning was off work and unable to work for medical reasons for a substantial period of time until being released to return to full work on July 1, 2008. Although the claimant presented herself as able to return to work, no work was available to the claimant with this employer. The claimant did not request nor enter into an approved leave of absence either at the time of her injury or subsequent to it.

The claimant is actively and earnestly seeking work by contacting perspective employers and has been released to return to full work by her physician.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Dunning had entered into a leave of absence and thus was voluntarily unemployed and unavailable for work. It does not.

The evidence in the record establishes that the claimant was injured in a non-work-related accident on or about February 27, 2008 and unable to work for a substantial period of time due to her injuries. The claimant did not request nor accept a leave of absence from her employer. Upon being fully released by her physician on July 1, 2008, the claimant contacted her employer but was not allowed to return to work even though fully released. The claimant is actively and earnestly seeking work and has no medical limitations which would prevent her from accepting employment in the general labor force.

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".

For the reasons stated herein, the administrative law judge concludes the claimant is able and available for work and not voluntarily unemployed by agreeing to a leave of absence.

DECISION:

The representative's decision dated September 17, 2008, reference 02, is reversed. The claimant did not request or agree to a leave of absence and was not voluntarily unemployed and is able and available for work. Benefits are allowed effective July 1, 2008, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs