

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARIA M ALAS

Claimant

APPEAL NO. 15A-UI-08099-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COUNCIL BLUFFS PAYROLL COMPANY

Employer

OC: 05/03/15

Claimant: Appellant (1)

Iowa Code Section 96.4(3) – Able & Available
871 IAC 24.23(10) – Leave of Absence

STATEMENT OF THE CASE:

Maria Alas filed a timely appeal from the July 9, 2015, reference 01, decision that denied benefits effective May 17, 2015, based on an Agency conclusion that Ms. Alas was on a leave of absence that she requested and that the employer approved. After due notice was issued, a hearing was held on August 21, 2015. Ms. Alas participated. Jessica Dobbe represented the employer. CTS Language Link Spanish-English interpreters Michelle Michel and Veronica Soto assisted with the hearing. Exhibits A through F were received into evidence.

ISSUES:

Whether Ms. Alas was able to work and available for work effective May 17, 2015.

Whether, since May 17, 2015, Ms. Alas was on a leave of absence that she requested and that the employer approved.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Maria Alas commenced her full-time employment with ConAgra Foods of Council Bluffs in 2012 and continues in the employment at this time. During the week that ended May 9, 2015, the employer was on a temporary shut down and Ms. Alas was temporarily laid off. Ms. Alas established a claim for unemployment insurance benefits that was effective May 3, 2015 and received benefits for the week that ended May 9, 2015. The employer restarted production on Monday, May 11, 2015 and Ms. Alas returned to the full-time employment at that time. The employer did not have work for Ms. Alas on Tuesday, May 12, 2015. Ms. Alas returned to work on May 13, 2015 and continued to perform work through Friday, May 15, 2015. Ms. Alas was next scheduled to work on Monday, May 18, 2015. Ms. Alas did not return to work as scheduled on May 18, 2015, because she was hospitalized and gave birth that day. Ms. Alas then commenced an approved period of maternity leave. Ms. Alas concluded the approved

period of leave on June 28, 2015 and returned to the full-time employment on Monday, June 29, 2015. Ms. Alas has continued in the full-time employment since her return on June 29, 2015. Had Ms. Alas not been on maternity leave, the employer would have had work for her during the period of the leave.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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. 871-24.23(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.

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.

The evidence in the record establishes that from May 17, 2015 through June 28, 2015, Ms. Alas was on a maternity leave that she requested and that the employer approved. During the leave period, Ms. Alas was not available for work and was not eligible for unemployment insurance benefits.

DECISION:

The July 9, 2015, reference 01, decision is affirmed. From May 17, 2015 through June 28, 2015, the claimant was on a leave of absence that she requested and that the employer approved. During the leave period, the claimant was not available for work and was not eligible for unemployment insurance benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs