

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAULA K PANSEGRAU
Claimant

APPEAL NO. 08A-UI-08169-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BURGER KING
Employer

OC: 07/13/08 R: 03
Claimant: Appellant (1/R)

Section 96.4-3 – Able to and Available for Work

STATEMENT OF THE CASE:

Paula K. Pansegrau (claimant) appealed a representative's September 9, 2008 decision (reference 01) that concluded she was not eligible to receive benefits as of July 13, 2008, because she requested and was granted a leave of absence from Burger King (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 29, 2008. The claimant participated in the hearing. Kathy Frerichs, the controller, 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:

Is the claimant able to and available for work while she is on a medical leave of absence with the employer?

FINDINGS OF FACT:

The claimant started working for the employer on June 11, 2001. The claimant works full-time as a general manager. The claimant's job requires her to be on her feet most of day.

On May 7, 2008, on her way home from work, the claimant was in an automobile accident. As a result of the accident, the claimant underwent surgery for neck problems. The claimant requested and the employer granted her a medical leave of absence.

During the week of July 13, the claimant's physician released her to a sit-down job and restricted her from lifting more than ten pounds. The claimant offered to return to work with this restriction, but the employer could not accommodate the claimant's work restrictions. The employer still considers the claimant an employee on a medical leave of absence. As of the date of the hearing, there is no deadline as to when the leave of absence ends.

The claimant established a claim for benefits during the week of July 13, 2008. She has filed for and received benefits since July 13, 2008.

REASONING AND CONCLUSIONS OF LAW:

Each week a claimant files a claim for benefits, she must be able to and available for work. Iowa Code § 96.4-3. When a claimant requests and is granted a leave of absence, the claimant is considered ineligible to receive benefits because the leave of absence is deemed a period of voluntary employment. 871 IAC 24.22(2)(j) and 871 IAC 24.23(10).

As of the date of the hearing, the employer still considers the claimant an employee who is on a medical leave of absence. Based on 871 IAC 24.22(2)(j) and 871 IAC 24.23(10), the claimant is not eligible to receive benefits while on a leave of absence. Even though the claimant's physician has released her to work with restrictions, a sit-down job, the claimant is unable to perform her job as a general manager.

As of the date of the hearing, the claimant has not been released to work so she can perform her duties as a general manager. Iowa Code § 96.5-1-d does not apply to this case because she is still unable to perform her regular job. The claimant's current job restrictions require her to look for a tailor made job, which effectively restricts her availability for work. As of the date of this decision, the claimant has not established that she is able to and available for work. Therefore, she is not eligible to receive benefits as of July 13, 2008.

The issue of overpayment is remanded to the Claims Section to determine the amount, if any, the claimant has been overpaid since July 13, 2008.

DECISION:

The representative's September 9, 2008 decision (reference 01) is affirmed. The claimant is not eligible to receive benefits as of July 13, 2008, because she is on an approved leave of absence and her current work restrictions unduly restrict her availability to work. If the claimant's work restrictions or leave of absence changes after September 29, 2008, she can reopen her claim and present new facts that could establish her ability to and availability for work. The issue of overpayment of benefits since July 13, 2008, is remanded to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css