

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CRYSTAL L COOPER
Claimant

MUDDY WATERS COFFEE CO INC
Employer

APPEAL 16A-UI-06428-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/15/16
Claimant: Appellant (1R)

Iowa Code § 96.4(3) – Able and Available
Iowa Admin. Code r. 871-24.22(2)j – Benefit Eligibility Conditions – Leave of Absence
Iowa Admin. Code r. 871-24.23(10) – Availability Disqualifications – Leave of Absence

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 6, 2016, (reference 01) unemployment insurance decision that denied benefits based upon her ability to and availability for work. The parties were properly notified about the hearing. A telephone hearing was held on June 23, 2016. Claimant participated and Ross Pentz observed. Employer participated through owner Jennifer Howard and owner JP Howard.

ISSUES:

Is the claimant able to and available for work?
Is the claimant on an approved leave of absence?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer in 2011 as a server. In January 2016, claimant began having personal problems which resulted in excessive absenteeism. Rather than terminate claimant, employer had a discussion with claimant regarding her problems and availability for work. Claimant explained her problems and stated she could not take it anymore. Owner Jennifer Howard suggested claimant take a leave of absence and return to work when she was ready to do so. Claimant agreed. Employer contacted claimant in March to see if she was ready to return to work. Claimant declined. Claimant never asked to return to work, although she believed employer would have allowed her to do so. Instead, claimant applied for unemployment benefits. After claimant received the June 6, 2016 (reference 01) decision denying her benefits, she separated from employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work through the week ending June 11, 2016.

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. 871-24.22(2)j(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 requested and was given a leave of absence to attend to personal matters for the period from January 2016 through the end of her employment during the week ending June 11, 2016. Claimant never requested to or was able to return to work during that time period. Accordingly, benefits are denied through the week ending June 11, 2016.

It appears that since filing this claim, claimant has been permanently separated from employment with employer. No decision has been issued on whether that separation disqualifies claimant from receiving benefits.

DECISION:

The June 6, 2016, (reference 01) decision is affirmed. The claimant is not able to work and available for work effective May 15, 2016, through the week ending June 11, 2016.

REMAND:

This matter is remanded for an initial determination on whether claimant's permanent separation from employment with employer disqualifies her from receiving benefits.

Christine A. Louis
Administrative Law Judge
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Decision Dated and Mailed

cal/pjs