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

IRMA TREVINO
Claimant

APPEAL NO. 12A-UI-07065-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

**OC: 05/06/12
Claimant: Appellant (2)**

Section 96.4-3 – Able and Available/Leave of Absence

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated June 6, 2012, reference 01, which denied unemployment insurance benefits as of May 6, 2012, finding that the claimant was voluntarily unemployed by requesting a leave of absence. After due notice was issued, a telephone hearing was held on July 10, 2012. The claimant participated. Appearing on behalf of the claimant was Mr. Adnan Mahmutagic, attorney at law. The employer participated by Mr. Dzemal Grcic, human resource clerk.

ISSUE:

The issue is whether the claimant is able and available for work.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Irma Trevino began employment with Tyson Fresh Meats on February 25, 2008. The claimant works as a full-time production worker and is paid by the hour. On May 6, 2012, the claimant was temporarily laid off by the employer when the employer would not allow the claimant to continue performing her work duties because the claimant had been required to wear a protective boot by her physician. The claimant had not been restricted from performing her duties by her doctor and the claimant had not requested a leave of absence. The claimant continues to be able and available for work at the time of hearing.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes the claimant does not meet the able and available requirements of the law because she is on a requested leave of absence. It does not.

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".

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 the record establishes the claimant was laid off by the employer and that the claimant did not request a leave of absence. The claimant is not voluntarily unemployed. The evidence in the record establishes the claimant is able to work effective May 6, 2012, and is eligible to receive unemployment insurance benefits, provided she meets all other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated June 6, 2012, reference 01, is reversed. The claimant is able to work and eligible for unemployment insurance benefits effective May 6, 2012, provided she meets all other eligibility requirements of Iowa law.

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Terence P. Nice
Administrative Law Judge

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Decision Dated and Mailed

kjw/kjw