

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

MELLISSA L ELLER
2511 NW 14TH ST
ANKENY IA 50023-1150

HY-VEE INC
c/o TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166-0283

TALX UC EXPRESS
3799 VILLAGE RUN DR #511
DES MOINES IA 50317

Appeal Number: 06A-UI-01409-JTT
OC: 01/01/06 R: 02
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

871 IAC 24.22(2)(j) –Leave of Absence

STATEMENT OF THE CASE:

Hy-Vee filed a timely appeal from the January 25, 2006, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on February 23, 2006. David Williams of TALX UC eXpress represented the employer, waived the opening statement, and presented testimony through Human Resources Manager Mike Blunk. Claimant Mellissa Eller did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. On January 24, prior to entry of the decision being appealed, Ms. Eller indicated to the factfinder that she was not interested in further pursuing a claim for benefits since she was re-employed.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On April 7, 2005, Mellissa Eller commenced her employment with Hy-Vee and worked as a part-time wine and spirits clerk. On September 18, 2005, Ms. Eller commenced an indefinite leave of absence due to pregnancy. On January 13, Ms. Eller contacted the employer about returning to work. The employer had no immediate need for Ms. Eller in the wine and spirits department, but agreed to employ Ms. Eller as a part-time cashier at the wage she earned at the start of her leave of absence. Ms. Eller returned to work at Hy-Vee on January 30 and continues in the employment.

Ms. Eller established a claim for benefits that was effective January 1, 2006, but to date has received no benefits.

REASONING AND CONCLUSIONS OF LAW:

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. 871 IAC 24.22(2)(j). If at the end of a period of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits. 871 IAC 24.22(2)(j)(1). On the other hand, 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. 871 IAC 24.22(j)(2).

The evidence in the record establishes that Ms. Eller was on an approved leave of absence from September 18, 2005, until she returned to work on January 30, 2006. That period was a negotiated leave of absence, and Ms. Eller would not be eligible for benefits during that period. The evidence further establishes that Ms. Eller has returned to the employment.

DECISION:

The Agency representative's decision dated January 25, 2006, reference 01, is reversed. The claimant was on a negotiated leave of absence at the time she established her claim for benefits and the leave of absence ended on January 30, 2006. Claimant was not eligible for benefits during the leave of absence. Further disqualification is not appropriate. The employer's account will not be charged.

jt/kjw