

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MELISSA L HEROLD
Claimant

APPEAL NO. 07A-UI-11355-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

**OC: 10/28/07 R: 03
Claimant: Appellant (4)**

871 IAC 24.22(2)j(1)(2) – Leave of Absence
871 IAC 24.23(10) – Availability
Section 96.4-3 – Availability for Work

STATEMENT OF THE CASE:

Melissa Herold filed an appeal from a representative's decision dated December 4, 2007, reference 01, which denied benefits effective October 8, 2007 upon a finding that the claimant requested and was granted a leave of absence and therefore was voluntarily unemployed and not available for work. After due notice was issued, a hearing was held by telephone on December 28, 2007. Ms. Herold participated personally. The employer participated by Ms. Elana Reader, Assistant Human Resource Manager.

ISSUE:

The issue in this matter is whether the claimant is available for work as of October 8, 2007.

FINDINGS OF FACT:

The administrative law judge having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for Tyson Fresh Meats from May 2004 until October 8, 2007, when she began a medical leave of absence that was agreed to by the company at the claimant's request. Ms. Herold was experiencing significant health problems due to a non-work-related illness or injury and it was determined by the claimant's physician that the use of ear protection required in the claimant's job was exacerbating the claimant's medical condition. Based upon Ms. Herold's request and the medical documentation she supplied, the claimant was granted a leave of absence from October 8, 2007 until October 29, 2007. Subsequently the leave of absence was extended to November 12, 2007 and again extended by the company until November 29, 2007. During this time the claimant was under the care of her doctor and two specialists because of her non-work-related medical condition. The medical practitioners had verified that the claimant was unable to return to work because of her medical condition and the requirement that all production workers conform to OSHA regulations by utilizing ear protection. Ms. Herold was advised by the company to seek and bid on non-production jobs that might be available and requested to supply additional documentation if she desired to extend her medical leave of absence. Ms. Herold was unable to bid on a

non-production job prior to November 29, 2007 and did not supply additional medical information to extend her leave of absence. The claimant's employment with the company came to an end therefore on or about November 29, 2007 when the company could no longer hold the claimant's job position open for her and no additional medical documentation had been supplied by Ms. Herold. After determining, based upon her medical condition that she would not be able to return to work at Tyson Fresh Meats, Ms. Herold actively sought reemployment through the services of Iowa Workforce Development, personal job searches and a submission of applications to a variety of employers for a variety of job positions that did not require ear protection.

REASONING AND CONCLUSIONS OF LAW:

The evidence in the hearing record establishes that the claimant did request and was granted a medical leave of absence by Tyson Fresh Meats beginning October 8, 2007 and continuing until on or about November 29, 2007 when the leave of absence expired and the claimant's employment ended. Under the provisions of Iowa law, the claimant is thus considered to be voluntarily unemployed during the period of the leave of absence and is considered ineligible for benefits. The evidence is further undisputed, however, that upon the expiration of the leave of absence and its extensions on or about November 29, 2007 the claimant began to actively and earnestly seek reemployment by contacting perspective employers both personally and through electronic media. The claimant has not placed limitations on the type of work that she would accept and the evidence in the record establishes the claimant has actively sought reemployment after the leave of absence expired and the claimant reasonably concluded that she would not be able to return to her work at Tyson Fresh Meats.

871 IAC 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.

871 IAC 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.

For the reasons stated herein the administrative law judge concludes that the claimant was not eligible to receive unemployment insurance benefits as of October 8 2007 through November 29, 2007 as she was voluntarily unemployed and not available for work while on a requested and approved leave of absence from Tyson Fresh Meats Inc. The administrative law judge concludes that the claimant has established ability and availability for work after November 29, 2007 and is eligible to receive unemployment insurance benefits for applicable weeks after that time provided that she has met all other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated December 4, 2007, reference 01, is hereby affirmed as modified. The claimant was voluntarily unemployed and not available for work while on a leave of absence as of October 8 2007 through November 29, 2007. The claimant is eligible for unemployment insurance benefits after November 29, 2007, provided she meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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