

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROBERTA N WIMS**  
Claimant

**APPEAL NO. 13A-UI-12366-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**NEWTON HEALTH CARE CENTER**  
Employer

**OC: 09/29/13**  
**Claimant: Appellant (1)**

871 IAC 24.23(10) – Leave of Absence

**STATEMENT OF THE CASE:**

The claimant, Roberta Wims, filed an appeal from a decision dated October 31, 2013, reference 03. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on November 26, 2013. The claimant participated on her own behalf. The employer, Newton Health Care Center, participated by Human Resources Manager Kim Slycord.

**ISSUE:**

The issue is whether the claimant is on a leave of absence.

**FINDINGS OF FACT:**

Roberta Wims began employment with Newton Health Care Center on May 29, 2013, as a full-time certified nursing assistant (CNA). She suffered a heart attack on September 16, 2013, and was hospitalized immediately. She had open heart surgery on September 24, 2013, and was not released from the hospital until September 30, 2013.

On October 1, 2013, she took her doctor's release to Human Resources Manager Kim Slycord. The restrictions prohibited her from lifting, pushing or pulling more than ten pounds for the next six weeks and she could not drive for four weeks. She could not perform the essential functions of her job with those restrictions.

The employer agreed to hold her job open for her for six weeks, until October 27, 2013. Ms. Wims mistakenly believed the six weeks would have started the day of her surgery, September 24, 2013, but the employer intended it to be effective September 16, 2013, the day she was hospitalized.

As of the date of the appeal hearing Ms. Wims has not been fully released to return to work without restrictions.

**REASONING AND CONCLUSIONS OF LAW:**

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".

The claimant has not been released to return to work without restrictions. A "recovery" under Section 96.5-1-d means a complete recovery without restriction. *Hedges v. IDJS*, 368 N.W.2d (Iowa App. 1985). The claimant is not able and available for work.

**DECISION:**

The representative's decision of October 31, 2013, reference 03, is affirmed. Roberta Wims is ineligible for unemployment benefits as she has not been fully released to return to work without restrictions.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs