

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARIA J TORRES

Claimant

APPEAL NO. 17A-UI-10994-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PACKERS SANITATION SERVICES INC

Employer

OC: 08/27/17

Claimant: Respondent (2)

IAC r. 871-24.23(10) – Leave of absence

STATEMENT OF THE CASE:

The employer, Packers Sanitation Services, Inc., filed a timely appeal from a representative's unemployment insurance decision dated October 18, 2017, reference 01, which held the claimant eligible to receive unemployment insurance benefits, finding that the claimant left work on August 10, 2017, because of illness or injury, and that after recovering offered to return to work but no work was available. After due notice was provided, a telephone conference hearing was held on November 15, 2017. Claimant participated. The employer participated by Mr. Erik Patricio, Site Manager.

ISSUE:

The issue is whether the claimant was discharged for misconduct, voluntarily left her employment for good cause, or whether the claimant entered into a leave of absence agreement with the employer.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Maria Torres began employment with Packers Sanitation Services, Inc. on December 15, 2015. Ms. Torres worked full-time as a general cleaning worker and was paid by the hour.

Ms. Torres was injured in a non-work related automobile accident in January 2017, but later resumed working. In May 2017, Ms. Torres had carpal tunnel surgery and returned to work with light duty limitations from her doctor. Packers Sanitation Services, Inc. accommodated the restrictions and assigned Ms. Torres to light duty work cleaning offices.

Later, on or about August 10, 2017, the claimant's physician imposed additional light duty restrictions on the type of work Ms. Torres could perform because her medical condition due to the automobile accident had worsened. The restrictions prohibited the claimant from any lifting, raising any object above her shoulders, and from pushing or pulling in any manner. Because the limitations essentially precluded the claimant from performing any type of work that the employer had, both parties mutually agreed to place the claimant on a medical leave of absence. The claimant expected to see her doctor and be released to return to full employment

approximately November 20, 2017. Under the terms of the agreement, the employer agreed to hold Ms. Torres' job or similar job open for her until her return, and the claimant agreed to return to employment when fully released by her physician.

At the time of hearing, Ms. Torres remained on the agreed upon leave of absence. The claimant, however, believes that it may be necessary to request an extension of her leave of absence if she is not released on November 20, 2017. The claimant has not quit her employment nor has the employer discharged her.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether Ms. Torres has been separated from her employment or whether she is on a leave of absence that had been agreed to and approved.

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 evidence in the record establishes that Ms. Torres is on a medical leave of absence from Packer Sanitation Service, Inc. The claimant and the employer agreed that the claimant would be placed on a leave of absence, so that her status as an employee could be preserved while the claimant's non-work related injuries mended and she was fully released by her physician to return to employment. Under the terms of the agreement, the employer preserves her job or a similar job for her until she is released to return and the claimant, in turn, has agreed to return to her work when fully released by her doctor.

Maria Torres established her claim for benefits effective August 27, 2017. An otherwise eligible claimant is eligible to receive benefits with respect to any week only if the evidence indicates the claimant is able to work, available for work, and is earnestly and actively seeking work. Iowa Code Section 96.4(3) and 871 IAC 24.22. The claimant bears the burden of establishing that the claimant meets the above requirements. See 871 IAC 24.22.

To satisfy the ableness requirement, an individual must be physically and mentally able to work in some gainful employment, not necessarily the individual's customary occupation, but which is engaged in by others as a means of livelihood. See 871 IAC 24.22(1). With regard to illness or injury, each case is decided upon in an individual basis recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. The statement is legally sufficient to establish the claimant's physical ability unless disproved by other evidence. To satisfy the availability requirement, an individual must be willing, able, and ready to accept suitable work which the individual does not have good cause to refuse. The individual must be genuinely attached to the labor market.

A leave of absence negotiated with the consent of both parties, the employer and the employee, is deemed a period of voluntary unemployment for the employee/individual and the individual is considered ineligible for benefits for the period. If at the end of the period of negotiated leave of absence, the employer fails to re-employ the individual, the individual is considered laid off and eligible for benefits. See 871 IAC 24.22(2)(j)(1). If the employee/individual fails to return at the end of the leave of absence and subsequently become unemployed, the individual is considered to have voluntarily quit and is ineligible for benefits. See 871 IAC 24.22(j)(2).

The evidence in the record establishes that the claimant has been on a mutually agreed upon leave of absence since August 10, 2017. Such period is deemed a period of voluntary unemployment and the claimant is ineligible for benefits. Since the claimant is ineligible for benefits, any benefits the claimant has received could constitute an overpayment. The administrative record reflects the claimant has received unemployment benefits in the amount of \$4,260.00 since filing a claim with an effective date of August 27, 2017 for the week ending dates September 2, 2017 through November 18, 2017. The administrative record also establishes that the employer did participate in the fact finding interview.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code section 96.3(7)a, b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

DECISION:

The representative's decision dated October 18, 2017, reference 01, is reversed. The claimant is on an approved leave of absence and therefore, disqualified for unemployment insurance benefits. Claimant does not meet the availability requirements of the law since opening her claim for benefits with the effective date of August 27, 2017. Claimant is overpaid unemployment insurance benefits in the amount of \$4,260.00 and is liable to repay that amount. The employer's account shall not be charged based upon the employer's participation in the fact finding interview.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

rvs/rvs