

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KAREN S JOHNSON
Claimant

APPEAL NO. 11A-UI-06809-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MAHASKA COUNTY HOSPITAL
Employer

OC: 03/13/11

Claimant: Appellant (4)

Section 96.4-3 – Able and Available
871 IAC 24.22(2)j – Leave of Absence

STATEMENT OF THE CASE:

Karen S. Johnson (claimant) appealed a representative's May 19, 2011 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits in connection with Mahaska County Hospital (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 16, 2011. This appeal was consolidated for hearing with one related appeal, 11A-UI-06810-DT. The claimant participated in the hearing. Jackie Bresnahan appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant eligible for unemployment insurance benefits by being able and available for work?

Was there period of voluntary unemployment through a leave of absence?

FINDINGS OF FACT:

The claimant started working for the employer on May 22, 2006. She works full-time as a housekeeper on an afternoon or evening, Sunday-through-Thursday schedule. As of the date of the hearing, she remained in that employment. However, there was a period of time, March 13 through April 24, 2011, when the claimant was off work completely, and there was another period of time, April 25 through June 4, 2011 where the claimant was only working half-time, four hours per week. She returned to full-time hours as of June 5.

The reason the claimant was completely off work from March 13 through April 24 was because before reporting for work on March 13 the claimant fell and broke her kneecap. Her doctor required her to fully remain off work through April 24. As of April 25, the doctor allowed the claimant to return to work, but restricted her to only being able to work four hours per day.

The doctor who was treating her knee injury indicated the claimant could return to full, eight-hour work days after being seen and cleared by her heart doctor. The claimant was seen by her heart doctor on May 23, who gave her a release to return to work but with “less strenuous work,” without specifying how many hours the claimant could work. The claimant provided the note to the employer that same day, but neither the claimant nor the employer were clear on what aspects of the claimant’s job were too strenuous for her to do or how many hours she could work, so on May 23 the employer submitted a copy of the claimant’s job description to the doctor with a request for clarification.

The claimant’s doctor did not get back to the employer until June 1, when he indicated the claimant could work eight hours and that the claimant’s restrictions were such that they could easily be accommodated within the employer’s job description, so long as she regularly took her scheduled breaks. Ms. Bresnahan, the human resources director, was unavailable to contact the claimant on June 1 or June 2; the claimant may or may not have been able to cover other scheduling issues so that she might have been able to return to work on either of those days. Ms. Bresnahan did contact the claimant on June 3; it was then arranged that the claimant returned to full-time work on June 5.

REASONING AND CONCLUSIONS OF LAW:

For each week for which a claimant seeks unemployment insurance benefits, she must be able and available for work. Iowa Code § 96.4-3. In general, an employee who is only temporarily separated from her employment due to being on a leave of absence is not “able and available” for work during the period of the leave, as it is treated as a period of voluntary unemployment. 871 IAC 24.22(2)j; 871 IAC 24.23(10)

The claimant’s unemployment between March 13 and April 24 was due to her being on a leave of absence due to a non-work-related medical issue. As the condition causing her temporary unemployment was not related to the work environment, in order to be sufficiently well for the claimant to regain her eligibility status as being able and available for work, she must have a complete recovery to full work duties without restriction. Hedges v. Iowa Department of Job Service, 368 N.W.2d 862, 867 (Iowa App. 1985); Iowa Code § 96.5-1-d. Unemployment insurance benefits are not intended to substitute for health or disability benefits. White v. Employment Appeal Board, 487 N.W.2d 342 (Iowa 1992).

Even from April 25 until June 1, the claimant was not fully released without restrictions affecting her ability to perform her normal job duties. During that period, the claimant sought partial unemployment insurance benefits. The unemployment insurance law provides that a claimant is deemed partially unemployed if she is not employed at her usual hours and wages and earns less than her weekly benefit amount plus \$15.00 in other employment. Iowa Code § 96.19-38-b.

However, implicit with the concept of allowing benefits for a claimant who is working fewer hours is that the reduction bringing the earned wages low enough to qualify for partial benefits has been because of the choice of the employer, not that the claimant is not able or willing to work the hours available to her. Rather, she must remain available for work on the same basis as when she was previously working. Iowa Code § 96.4-3; 871 IAC 22(2)(a). The reason the claimant’s earnings for the period between April 25 and June 1 were reduced was because she was not medically able and available to work the regular number of hours the employer had available to her; she is thus ineligible for unemployment insurance benefits for that period. 871 IAC 24.23(29).

For the benefit week ending June 4, 2011, the claimant's regular schedule would have had her working May 29 through June 2. The claimant might have been able and available for the last one or two of these five days, but she was not able and available for the majority of the regular work week. Therefore, she is also not eligible to receive partial unemployment insurance benefits for the week ending June 4. 871 IAC 24.22(h).

DECISION:

The representative's May 19, 2011 decision (reference 01) is modified in favor of the claimant. There was no full separation from employment, so there is no ten times requalification required as had been indicated in the representative's decision, but the claimant was not able and available for work and not eligible for full or partial benefits for the period of March 13, 2011 through June 4.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw