

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**HEATHER J BURNEY-RUSH**  
Claimant

**APPEAL NO: 12A-UI-13623-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GENESIS HEALTH SYSTEM**  
Employer

**OC: 10/14/12**  
**Claimant: Appellant (4/R)**

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

**STATEMENT OF THE CASE:**

Heather J. Burney-Rush (claimant) appealed a representative's November 6, 2012 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits in connection with Genesis Health System (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 14, 2012. The claimant participated in the hearing. The employer failed to respond to the hearing notice and provide a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

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 November 8, 2010. She worked full time as an insurance billing representative. Her last day of physical work was August 27, 2012. Beginning at that time she went on a leave of absence covered under FMLA (Family Medical Leave) to provide care for her mother.

The claimant's FMLA eligibility was due to expire on September 27, 2012. On September 24, 2012 she completed a form to return to work. She did ask that she be allowed to work six hours per day rather than eight hours per day for the first two weeks, so she could still assist her mother for that period. On September 28 the employer informed the claimant that her request to return was denied, and she was told that her position was being posted. She was not told why her request to return was being denied, but she was told that she could apply to be rehired for other positions with the employer.

The claimant resumed being available for full time (eight hours of work per day) as of the week beginning October 7, 2012.

**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 from August 28 through September 28 was due to her being on a leave of absence due to the need to care for her mother. As the condition causing her temporary unemployment was not related to the claimant’s 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 be able to return to work. *Hedges v. Iowa Department of Job Service*, 368 N.W.2d 862, 867 (Iowa App. 1985); Iowa Code § 96.5-1. To be eligible as able and available for work, a claimant must remain available for work on the same basis as when her base period wages were accrued. 871 IAC 24.22(2)f. She did offer to return to work as of September 24, and she indicated she could return without restriction as of October 7, 2012. However, as of September 28 she was informed that her regular job was no longer available to her.

For the period of August 28 through October 6, 2012 the claimant was not able to return to her regular full time work duties. She is therefore not eligible to receive unemployment insurance benefits for that period. However, as of October 7, 2012 she is able and available for work and would be eligible if she is otherwise qualified.

It appears that while the leave of absence has ended, an actual separation from employment did occur on or about September 28. It appears that this separation may be governed by Iowa Code § 96.5-1-c and 871 IAC 24.26(8), in that it appears that the claimant sought to return to work after her need to care for her mother had ended, but no work was available for her. However, this issue was not included in the notice of hearing for this case, and the case will be remanded for an investigation and preliminary determination on that issue. 871 IAC 26.14(5).

**DECISION:**

The representative’s November 6, 2012 decision (reference 01) is modified in favor of the claimant. The claimant was not able and available for work effective August 28 through October 6, 2012. The claimant is not qualified to receive unemployment insurance benefits for the period ending October 6, 2012. The matter is remanded to the Claims Section for investigation and determination of the separation issue.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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