

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICA R CAVIN**

Claimant

**APPEAL NO: 12A-UI-10702-D**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**

Employer

**OC: 06/17/12**

**Claimant: Appellant (5)**

Section 96.4-3 – Able and Available  
871 IAC 24.22(2)j – Leave of Absence  
Section 17A.12-3 – Non-appearance of Party  
871 IAC 26.8(5) – Decision on the Record

**STATEMENT OF THE CASE:**

Mica R. Cavin (claimant/appellant) appealed a representative's August 30, 2012 decision (reference 03) that concluded she was not qualified to receive unemployment insurance benefits in connection with Casey's Marketing Company (employer/respondent). The claimant/appellant requested that the hearing be held in-person. Notices of hearing were mailed to the parties' last known address of record for an in-person hearing to be held at 9:00 a.m. on November 6, 2012. Both parties failed to respond to the hearing notice and appear at the time and place set for the hearing, and therefore did not participate in the hearing. Based on the appellant's failure to participate in the hearing, the administrative file, 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 parties were properly notified of the scheduled hearing on this appeal. The appellant failed report at the scheduled time and place for the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. The administrative law judge has conducted a careful review of the administrative file to determine whether the unemployment insurance decision should be affirmed.

The claimant started working for the employer on November 2, 2011. She worked full-time as a second assistant manager. Her last day of work was June 12, 2012. On June 13 she underwent surgery for carpal tunnel on her right hand, a non-work related medical issue. After being partially released with work restrictions as of June 27, 2012, her doctor released her to return to work with no restrictions as of July 25, 2012. A separation from employment then occurred on or about July 25, 2012.

As of July 25, the claimant and the employer were both aware that the claimant was going to need a second surgery, but as of that time the surgery had not been scheduled. After the separation, the claimant determined to proceed with scheduling the second surgery, which was then done on August 8. After that surgery, she was not able to work for six to eight weeks, at least through September 19, 2012.

Two subsequent representative's decisions have been issued regarding the separation, one on September 17, 2012 (reference 04) and one on September 26, 2012 (reference 05), concluding that the separation was disqualifying. The claimant has also appealed those decisions, and a telephone hearing on those appeals is pending under 12A-UI-12464-BT and 12A-UI-12465-BT, respectively, currently scheduled for hearing at 8:00 a.m. on November 13, 2012.

#### **REASONING AND CONCLUSIONS OF LAW:**

The Iowa Administrative Procedures Act at Iowa Code § 17A.12-3 provides in pertinent part:

If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and make a decision in the absence of the party. ... If a decision is rendered against a party who failed to appear for the hearing and the presiding officer is timely requested by that party to vacate the decision for good cause, the time for initiating a further appeal is stayed pending a determination by the presiding officer to grant or deny the request. If adequate reasons are provided showing good cause for the party's failure to appear, the presiding officer shall vacate the decision and, after proper service of notice, conduct another evidentiary hearing. If adequate reasons are not provided showing good cause for the party's failure to appear, the presiding officer shall deny the motion to vacate.

871 IAC 26.8(3), (4) and (5) provide:

Withdrawals and postponements.

(3) If, due to emergency or other good cause, a party, having received due notice, is unable to attend a hearing or request postponement within the prescribed time, the presiding officer may, if no decision has been issued, reopen the record and, with notice to all parties, schedule another hearing. If a decision has been issued, the decision may be vacated upon the presiding officer's own motion or at the request of a party within 15 days after the mailing date of the decision and in the absence of an appeal to the employment appeal board of the department of inspections and appeals. If a decision is vacated, notice shall be given to all parties of a new hearing to be held and decided by another presiding officer. Once a decision has become final as provided by statute, the presiding officer has no jurisdiction to reopen the record or vacate the decision.

(4) A request to reopen a record or vacate a decision may be heard ex parte by the presiding officer. The granting or denial of such a request may be used as a grounds for appeal to the employment appeal board of the department of inspections and appeals upon the issuance of the presiding officer's final decision in the case.

(5) If good cause for postponement or reopening has not been shown, the presiding officer shall make a decision based upon whatever evidence is properly in the record.

The administrative law judge has carefully reviewed evidence in the record and concludes that the unemployment insurance decision previously entered in this case is correct and should be affirmed. 871 IAC 26.8(5).

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); 871 IAC 24.23(10).

The claimant’s unemployment from June 13 through July 25 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). For the period of June 13 through July 25, the claimant was under sufficient work restrictions as would preclude her from returning to her regular work duties. She is therefore not eligible to receive unemployment insurance benefits for that period.

Also, for the period from August 8 through at least September 19, because of the second surgery and the need to remain off work during the recovery period from that surgery, the claimant is not eligible to receive benefits during that time. Where a claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work, the claimant is not able and available for work as required to be eligible to receive benefits. 871 IAC 24.23(35).

Finally, any eligibility after July 25 will be subject to a final determination as to whether there was a disqualifying separation at that time. That issue will be determined through the pending appeals on the separation.

**DECISION:**

The representative’s August 30, 2012 decision (reference 03) is affirmed as amended with no immediate effect on the parties. The claimant was not able and available for work effective June 13, 2012, and the period of temporary separation through July 25, 2012 was a period of voluntary unemployment not attributable to the employer. The claimant is not qualified to receive unemployment insurance benefits for that period. That period of disqualification ended as of that date and a separation occurred, and the determination on that separation will control the claimant’s eligibility after July 25, with the additional period of disqualification from August 8 through September 19, 2012, due to another period of the claimant not being able and available for work.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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