

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RHONDA R BENDER
Claimant

APPEAL NO. 12A-UI-02248-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DELTA AIRLINE INC
Employer

OC: 01/01/12
Claimant: Appellant (2)

Section 96.4-3 – Able to and Available for Work
871 IAC 24.23(10) – Leave of Absence

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated February 24, 2012, reference 01, that concluded she was voluntarily unemployed because she had requested and was granted a leave of absence. A telephone hearing was held on March 21, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing. No one participated in the hearing on behalf of the employer. Exhibits A was admitted into evidence at the hearing.

ISSUE:

Was the claimant voluntarily unemployed because she requested and was granted a leave of absence?

FINDINGS OF FACT:

The claimant worked as a flight attendant for the employer from April 2008 to December 31, 2011.

For flight attendants, the employer has established a Special Leave Incentive Program (SLIP) that is available during no peak seasons as a tool to avoid layoffs. Flight attendants on leave under SLIP maintain their benefits and seniority and are told the employer will not contest any award of unemployment insurance, although the employer makes it clear that it cannot dictate to the state what decision will be made on the claim. Flight attendants during non-peak periods who are placed on leave under the SLIP must remain available to be recalled to work at any time and the employer can cancel the SLIP leave with seven days' notice. Flight attendants on SLIP leave cannot cancel the leave if award. Flight attendants are required to maintain training qualification by attending any required training or SLIP will be canceled.

The claimant bid for SLIP leave in October and it was granted in November for the period from January 1, 2012, through April 30, 2012. She did this because she believed that she would have likely been laid off during this time due to economic conditions and she did not want to

lose her seniority and benefits. The claimant remained able to and available for recall and in fact worked when requested on two occasions in February 2012.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code § 96.4-3. The agency disqualified the claimant based on 871 IAC 24.23(10), which provides that a claimant who requests and is granted a leave of absence is considered voluntarily unemployed and unavailable for work.

The problem here is the SLIP program has both elements of a voluntary leave and a temporary layoff due to lack of work, especially since the claimant has been available to return to work for the employer, but the employer has only needed her to work twice since January 2012. Since the employer did not participate in this case to present evidence that continuing work was available for the claimant from January 2012 to the present and encouraged the claimant to take the leave, I believe the separation should be treated as a temporary layoff.

Although the claimant spoke during the hearing about receiving “wage loss payments” due to an injury, the evidence is clear that she has not received any payments that apply to weeks she filed for benefits and the evidence shows she was released to work without restriction as of January 1, 2012, so there is no medical availability issue here.

DECISION:

The unemployment insurance decision dated February 24, 2012, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css