

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JANET L CASSMANN
Claimant

APPEAL NO. 09A-UI-16278-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

COMPREHENSIVE SYSTEMS INC
Employer

**Original Claim: 09/27/09
Claimant: Appellant (1)**

871 IAC 24.22(2)(j) –Leave of Absence

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated October 26, 2009, reference 04, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on December 3, 2009. The claimant participated. The employer participated by Mary Amsbaugh, program manager, and Sheryl Heyenga, program director. The record consists of the testimony of Janet Cassmann, the testimony of Mary Amsbaugh, the testimony of Sheryl Heyenga, and Employer's Exhibits 1 through 4.

ISSUES:

Whether there has been a separation from the employment.

Whether the claimant is on an approved leave of absence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer in this case provides individual support for people in the community who have special needs. The claimant was on the direct support staff and worked in a home where supported individuals live. On September 24, 2009, the claimant was hospitalized after suffering a seizure. The exact cause of this seizure has not been determined, but the claimant lost her driver's license due to the seizure. She must have six seizure-free months before she is able to get her license back. The claimant cannot do her job as support staff, because it is essential that she be able to drive and she is not licensed to drive at this time.

The claimant requested a medical leave of absence for six months and the employer agreed. At present, the claimant is still on a medical leave of absence and does not anticipate being able to get her license back for approximately four more months, assuming she is seizure free. The claimant's medical leave of absence started on October 1, 2009.

REASONING AND CONCLUSIONS OF LAW:

A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period. 871 IAC 24.22(2)(j). If at the end of a period of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits. 871 IAC 24.22(2)(j)(1). On the other hand, if the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed, the individual is considered as having voluntarily quit and therefore is ineligible for benefits. 871 IAC 24.22(j)(2).

The weight of the evidence in the record indicates that the claimant commenced an approved leave of absence on October 1, 2009, and continues on an approved leave of absence at this time. Accordingly, the claimant is deemed voluntarily unemployed while she continues on an approved leave of absence and, therefore, is ineligible for unemployment insurance benefits. However, if the claimant does not return to the employment, or is not allowed to return to the employment, at the end of the approved leave the absence, the issue of her eligibility for unemployment insurance benefits in connection with a separation from the employment will need to be revisited.

DECISION:

The representative's decision dated October 26, 2009, reference 04, is affirmed. The claimant is considered to be voluntarily unemployed and not available for work. Benefits are denied as of September 27, 2009.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw