

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANDREA M LEITCH
Claimant

APPEAL NO. 07A-UI-06122-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MERCY MEDICAL CENTER
Employer

OC: 05/20/07 R: 03
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Andrea M. Leitch (claimant) appealed a representative's June 12, 2007 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits in connection with Mercy Medical Center (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 5, 2007. The claimant participated in the hearing. Jerry Truemper appeared on the employer's behalf. During the hearing, Exhibit A-1 was entered into evidence. 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?

FINDINGS OF FACT:

The claimant started working for the employer on August 15, 2000. She works full time as a cook. She was off work beginning March 27 through June 10, 2007. On March 26, she had fallen while away from the workplace and broken her ankle. She submitted a request for and was granted FMLA (Family Medical Leave).

On or about May 9, the claimant's doctor had indicated she could return to work as of May 23 but only if she wore a protective "boot." When the claimant presented this to the employer's human resources department she was advised that the employer could only allow her to return to work if she returned with no restrictions. The human resources department was unaware that there had been a period in about 2004 when the claimant had worn a "boot" at work; however, in that instance the claimant had not been off work for any time so that human resources was not involved. The employer was concerned that if the claimant's injury was such that she was still restricted to wearing the boot she could reinjure herself with the full day of standing required in her job, and was additionally concerned that the awkwardness and openness of the boot itself could result in other injury.

The claimant returned to her doctor on June 6 and received a release indicating that as of June 11 she could return to full duties without any restriction including the boot. She in fact did return to her duties as of June 11.

REASONING AND CONCLUSIONS OF LAW:

A claimant must be able and available for work in order to be eligible for unemployment insurance benefits.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.22(2)j(1)(2)(3) provides:

Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

j. Leave of absence. 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.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) 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.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

871 IAC 24.23(10) provides:

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

When a period of voluntary unemployment such as the leave of absence is due to a non-work-related injury, the employer can require that in order to return the claimant must have fully "recovered," meaning a complete recovery without restriction. Hedges v. Iowa Department of Job Service, 368 N.W.2d 862 (Iowa App. 1985). 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). The claimant's period of unemployment up to and including June 10, 2007 is due to her being on a leave of absence and not being fully released without restriction until June 11. She is not eligible for unemployment insurance benefits for the period of her leave of absence.

DECISION:

The representative's June 12, 2007 decision (reference 01) is affirmed. The claimant was not able to work and available for work until June 11, 2007.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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