

the medical surgical floor prior to commencing the leave of absence. Ms. Hodges intended to take six weeks' leave after the birth of her child, but the employer and Ms. Hodges agreed to a flexible return date. During the leave of absence, Ms. Hodges obtained her registered nurse license. Ms. Hodges advised the employer that she had earned her license. On August 21, Ms. Hodges advised the employer that she was ready and able to return to the employment on August 30. When Ms. Hodges inquired about returning to the employment, she inquired about returning as a nurse rather than a certified nursing assistant. Ms. Hodges limited her availability for a nursing position to the first shift. The hospital was not able to accommodate Ms. Hodges' request for a first shift nursing position. Ms. Hodges advised the employer that she would be willing to return to her prior work as a certified nursing assistant, with the hope that a first shift nursing position would open in the foreseeable future. It was unlikely that Ms. Hodges, as a new nurse, would be able to successfully compete for a first shift nursing position, since these positions ordinarily go to nurses with greater experience. The employer decided that having Ms. Hodges return with a registered nurse license to perform nursing assistant duties would result in "role confusion," and advised Ms. Hodges that it was not willing to return her to her previous duties. The hospital did offer Ms. Hodges a nursing position, but it was not for the first shift. Ms. Hodges did not return to the employment. Ms. Hodges subsequently established a claim for benefits that was effective August 28, 2005.

REASONING AND CONCLUSIONS OF LAW:

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. See 871 IAC 24.22(2)(j)(1).

The evidence in the record indicates that the Ms. Hodges was willing to return to the employment at the end of the negotiated leave of absence. Despite having earned her nursing license, Ms. Hodges was willing to return to her previous duties as a certified nursing assistant. The employer declined to return Ms. Hodges to her previous employment. Accordingly, Ms. Hodges is deemed laid off as of August 30, 2005, and is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Hodges.

The evidence presented at the hearing raises the issue of whether Ms. Hodges had refused a suitable offer of employment from her former employer. See Iowa Code section 96.5(3) and 871 IAC 24.24(14). That issue was not included in the notice the parties received for the hearing and Ms. Hodges was not willing to waive her right to seven days' notice. This matter will be remanded to address the issue.

DECISION:

The Agency representative's decision dated September 15, 2005, reference 01, is reversed. The employer failed to reemploy the claimant at the end of a period of negotiated leave of absence. The claimant is deemed laid off and is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant. The matter is remanded for a determination of whether the claimant has refused a suitable offer of work from her former employer.

jt/pjs