

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRENDA GARMAN
Claimant

APPEAL NO: 16A-UI-05476-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY
Employer

OC: 04/17/16
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 12, 2016, reference 01 decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on June 1, 2016. The claimant participated in the hearing with Union Representative Brian Ulin. The employer provided a telephone number prior to the hearing but was not available at that number at the time of the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

ISSUE:

The issue is whether the claimant is able and available for work and whether she is on a leave of absence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant suffered a non-work related back injury and had surgery August 7, 2015. She returned to work for four hours per day around October 31, 2015. Her physician gradually increased the number of hours she could work until she was at eight hours per day in April 2016. The claimant began experiencing pain when working eight hours per day and as a result she returned to her surgeon who restricted her to working four hours per day for three months.

On April 18, 2016, the claimant provided the employer with her doctor's note stating she could work four hours per day effective April 14 through July 14, 2016, and continuing her other restrictions. She was taken to human resources where she was asked for her badge and told the employer could not accept or honor her doctor's excuse but it was granting her an 18-month leave of absence. The claimant did not want or need an 18-month medical leave and refused to sign the paperwork agreeing to those terms. The nurse subsequently took the claimant to her locker to retrieve her personal items and then walked her out to the guard shack.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is able and available for work and did take a leave of absence.

Iowa Code § 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".

Iowa Admin. Code r. 871-24.22(2)(1)(2) provides:

Benefits 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.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

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.

Iowa Admin. Code r. 871-24.23(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.

The claimant returned to work after her back surgery and the employer accommodated her condition and restrictions by allowing her to work less than eight hours per day until April 2016. After she began working an eight-hour shift for a few days in April 2016 her surgically repaired back was bothering her again and her surgeon indicated she should return to working four-hour shifts from April 14 through July 14, 2016, and continued her restrictions, limiting her to not lifting more than five pounds, not bending, not twisting her torso, and not squatting. The note also contained the phrase, "As patient tolerates." The claimant asked to call her doctor to see if he would change her restrictions but the employer stated it could not accommodate her restrictions and subsequently placed the claimant on an 18-month medical leave of absence. The claimant did not request the leave of absence and did not wish to take a leave but the employer forced her to do so. It then walked her out of the plant.

Given the claimant's restrictions, she cannot be considered able and available for work within the meaning of the law. If the claimant receives a full release without restrictions and returns to the employer and the employer fails to offer the claimant a comparable position at that time, the claimant would be considered able and available for work and most likely eligible for benefits.

The employer placed the claimant on an 18-month medical leave of absence. The claimant did not request an 18-month leave and her doctor's note only stated she should work four-hour days for three months. The leave was not "negotiated with the consent of both parties" but rather was imposed on the claimant. See 871 IAC 24.22(2)j. The employer told the claimant it could not accommodate her restrictions. Consequently, the administrative law judge concludes the claimant is on a medical leave of absence until July 14, 2016, the date her physician released her to return to work.

DECISION:

The May 12, 2016, reference 01, decision is affirmed. The claimant is not able and available for work at this time and did take a leave of absence from April 14, 2016 to July 14, 2016. Benefits are withheld until such time as the claimant returns to the employer with a full release and offers her services and the employer does not provide her with comparable and suitable work.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs