

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MISTY K CADY
Claimant

APPEAL NO. 10A-UI-02009-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

LINN MAR COMMUNITY SCHOOL DISTRICT
Employer

OC: 12/27/09
Claimant: Appellant (1)

871 IAC 24.22(2)(j) Leave of Absence

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated February 3, 2010, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 16, 2010. Claimant participated. Employer participated by Phil Miller, human resources generalist. The record consists of the testimony of Misty Cady; the testimony of Phil Miller; and Claimant's Exhibit A.

ISSUE:

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 is a school district. The claimant was hired on November 9, 1999, as a full-time custodian. As a full time employee, she was required to work 40 hours per week. The claimant's last day of work was October 13, 2009. She was granted Family Medical Leave (FMLA) leave, which ran out on December 22, 2009. After the expiration of her FMLA leave, the claimant was placed on "district extended leave." She was still on that district extended leave on the date of the hearing.

The claimant was released to return to work by her physician on December 28, 2009, for 10 hours a week. The employer could not accommodate this restriction. The claimant's medical condition is non-work-related.

REASONING AND CONCLUSIONS OF LAW:

Each week a claimant files a claim for benefits, she must be able to and available for work. Iowa Code section 96.4-3. When a claimant requests and is granted a leave of absence, the claimant

is considered ineligible to receive benefits because the leave of absence is deemed a period of voluntary employment. 871 IAC 24.22(2)(j) and 871 IAC 24.23(10).

As of the date of the hearing, the employer still considers the claimant an employee who is on a medical leave of absence. Based on 871 IAC 24.22(2)(j) and 871 IAC 24.23(10), the claimant is not eligible to receive benefits while on a leave of absence. Even though the claimant's physician has released her to work with restrictions, 10 hours per week, the claimant is unable to perform her job as a full-time custodian.

As of the date of the hearing, the claimant has not been released to work so she can perform her duties as a full time custodian. Iowa Code section 96.5-1-d does not apply to this case because she is still unable to perform her regular job. The claimant's current job restrictions require her to look for a tailor made job, which effectively restricts her availability for work. As of the date of this decision, the claimant has not established that she is able to and available for work. Therefore, she is not eligible to receive benefits as of December 27, 2009.

There was evidence at the hearing that the claimant may be terminated by the employer in the near future. In the event that a separation of employment occurs, the issue of the claimant's entitlement to unemployment insurance benefits may need to be revisited.

DECISION:

The representative's decision dated February 3, 2010, reference 01, is affirmed. The claimant is considered to be voluntarily unemployed and not available for work. Benefits are denied as of December 27, 2009.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs