

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**STEVI M FOWLER**

Claimant

**APPEAL NO: 13A-UI-08406-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 06/23/13**

**Claimant: Appellant (2)**

Iowa Code § 96.4(3) – Ability to and Availability for Work  
871 IAC 24.23(10) – Requested Leave of Absence

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's July 12, 2013 determination (reference 01) that held her ineligible to receive benefits as of June 23, 2103, because she requested and was granted a leave of absence. The claimant participated in the hearing, with her witness Lisa Eastman. Based on the evidence, the claimant's arguments, and the law, the administrative law judge concludes the claimant is eligible to receive benefits as of June 23, 2013.

**ISSUE:**

As of June 23, 2013, is the claimant available for work and eligible to receive benefits?

**FINDINGS OF FACT:**

The claimant was working for Red Oak Healthcare Community as a CNA and med aide. The claimant worked 60 percent of the time as a med aide. Prior to June 23, 2013, the claimant had requested FMLA when her baby is born. The claimant's estimated due date is September 2, 2013.

The week of June 23, the claimant gave the employer her physician's work restriction – no lifting more than 25 pounds. The employer's corporate office would not accommodate the lifting restriction. The corporate office informed Eastman that the claimant's leave of absence would be made effective as of June 23 instead of late August or early September. The claimant is still considered an employee, but on a leave of absence.

The claimant established a claim for benefits during the week of June 23, 2013. She has looked for work as a waitress. She has experience working as a waitress and this job accommodates her work restrictions. Since the claimant plans to return to work at Red Oak Healthcare Community, she has not looked for another CNA job.

**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 § 96.4(3). The law presumes a claimant is voluntarily unemployed and ineligible to receive benefits when she requests and is granted a leave of absence. 871 IAC 24.23(10).

The facts establish the claimant requested a leave of absence when her baby is born in late August or early September, not during the week of June 23, 2013. After the claimant's physician gave her a lifting restriction that she could not lift more than 25 pounds, the claimant wanted to continue working as a med aide. The employer's corporate office would not allow her to do this. The corporate office made the claimant's leave of absence effective as of June 23. The claimant did not request a leave in June. The claimant demonstrated she is available to work as of June 23, 2013. Therefore, she is eligible to receive benefits as of June 23, 2013.

**DECISION:**

The representative's' July 12, 2013 determination (reference 01) is reversed. The claimant did not request a leave of absence as of June 23, 2013. Even though the claimant has a lifting restriction of 25 pounds as of June 23, 2013, she is available to work and demonstrated work she is capable of doing. The fact the employer would not accommodate the claimant's lifting restriction does not make the claimant ineligible to receive benefits. As of June 23, 2013, the claimant is eligible to receive benefits, provided she meets all other eligibility requirements.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css