

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

REBECCA L ZUCK

Claimant

APPEAL NO. 09A-UI-14843-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 08/30/09

Claimant: Appellant (1)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Rebecca Zuck filed a timely appeal from the September 30, 2009, reference 01, decision that denied benefits based on an Agency conclusion that she was not able to work. After due notice was issued, a hearing was held on November 3, 2009. Ms. Zuck participated. Connie Smith represented the employer.

ISSUE:

Whether the claimant has been able to work and available for work since establishing her claim for benefits.

Whether Ms. Zuck is on an approved leave of absence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Rebecca Zuck started working for the Bondurant Casey's in 2001. Ms. Zuck is a full-time cook/cashier. Ms. Zuck's immediate supervisor is Connie Smith, Store Manager. Ms. Zuck last performed work for the employer on July 25, 2009. Ms. Zuck then commenced an approved leave of absence so that she could undergo a bone marrow transplant at the University of Iowa Hospitals and Clinics. Ms. Zuck underwent the procedure on July 28, 2009 and was discharged from the hospital on August 17, 2009. Ms. Zuck's doctor has taken her off work for six months while she recovers. Ms. Zuck's doctor provided a medical excuse for the six-month absence and Ms. Zuck provided the document to the employer. Both parties expect that Ms. Zuck will return to the employment at the end of the approved leave. Neither has severed the employment relationship.

REASONING AND CONCLUSIONS OF LAW:

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(1)a 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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

871 IAC 24.22(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.

Iowa Administrative Code rule 871 IAC 24.23 provides, in relevant part, as follows:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

24.23(1) An individual who is ill and presently not able to perform work due to illness.

24.23(6) If an individual has a medical report on file submitted by a physician, stating such individual is not presently able to work.

24.23(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.

24.23(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

All of the above provisions apply to Ms. Zuck, who is away from work while she recovers from a major medical procedure. Ms. Zuck does not meet the work ability and availability of Iowa Code section 96.4(3) and is not eligible for unemployment insurance benefits. Benefits are denied effective August 30, 2009.

Because there has been no severance of the employment relationship, the administrative law judge need not further address the separation issues set for hearing.

DECISION:

The Agency representative's September 30, 2009, reference 01, is affirmed. The claimant has not been able and available for work since establishing her claim for benefits. Accordingly, the claimant is not eligible for benefits. Benefits are denied effective August 30, 2009.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs