

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

TAMMY L DAVIS
Claimant

APPEAL NO: 19A-UI-03523-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

REM IOWA COMMUNITY SERVICES INC
Employer

OC: 03/24/19
Claimant: Appellant (1-R)

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 April 25, 2019, 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 May 16, 2019. The claimant participated in the hearing. Linda Blair, Employee Relations Manager; Alison Turner, Employee Relations Manager; and Regina Porter, Employer's Representative; participated in the hearing on behalf of the employer.

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 was attacked in the office of the employer March 20, 2017, and has been off work since that date. She received worker's compensation payments until March 27, 2019, when she was deemed to have reached maximum medical improvement. When an employee is on worker's compensation it is considered to be a leave of absence. The claimant's physician has not released her to return to work for the employer or in any field where she would work with clients with mental health or disability diagnoses. The claimant has no intention of returning to work for the employer.

There are issues regarding the claimant's separation from this employer that have not yet been heard or adjudicated by the Benefits Bureau.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not 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)j(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 was on worker's compensation from March 20, 2017 through March 27, 2019, and is considered to be on a leave of absence during that time. Accordingly, benefits are denied.

The claimant has separated from this employer as she has no plans to return to work for the employer. The issue of the claimant's separation from this employer is remanded to the Benefits Bureau for an initial determination and adjudication.

DECISION:

The April 25, 2019, reference 01, decision is affirmed. The claimant is not able and available for work and did take a leave of absence from March 20, 2017 to March 27, 2019. Benefits are denied. The issue of the claimant's separation from this employer is remanded to the Benefits Bureau for an initial determination and adjudication.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn