

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMANDA L HOLMES

Claimant

APPEAL NO. 11A-UI-13220-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GRANDMA'S HOUSE DAY CARE

Employer

OC: 08/28/11

Claimant: Respondent (2R)

Section 96.4-3 – Able and Available for Work/Leave of Absence

STATEMENT OF THE CASE:

Employer filed a timely appeal from the representative's decision dated September 29, 2011, reference 01, which held the claimant eligible to receive unemployment insurance benefits. A telephone hearing was conducted on October 31, 2011. The parties waived notice on the issue of the claimant's availability for work/leave of absence.

ISSUE:

At issue in this matter is whether the claimant was able and available for work within the meaning of the Employment Security Law.

FINDINGS OF FACT:

The administrative law judge having, considered the evidence in the record, finds: Amanda Holmes began employment with Grandma's House Day Care on October 3, 2007 and was employed as a full-time preschool teacher. The claimant's last day of work was August 26, 2011.

On August 26, 2011 Ms. Holmes notified the employer that she had been notified by the Iowa Department of Human Services that she was not qualified to work in a daycare as an allegation of child abuse had been founded. The parties at that time agreed that Ms. Holmes could enter a leave of absence until she had exhausted appeal rights appealing the determination of the Department of Human Services. The parties agreed that the claimant could return to her normal job or a similar position at that time providing that it was later determined that the initial decision had been reversed.

Ms. Holmes denies any inappropriate care or treatment of children under her care during the incident that had caused the Department of Human Services that prohibited the claimant from being involved in childcare.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant is not able to work and available for work within the meaning of the Iowa Employment Security 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(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.

871 IAC 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 evidence in the record establishes that the claimant requested and was given a leave of absence to appeal a determination of the Department of Human Services that had found allegations of transgressions to be founded that prohibited the claimant from being involved in childcare. Under the terms of agreement the childcare provider holds the claimant's job open or a similar job until the appeal process is completed. The evidence establishes that the parties entered into a negotiated leave of absence. The period of the leave of absence is deemed to be a period of voluntary unemployment and the claimant is considered ineligible for benefits for that period. Unemployment insurance benefits are denied.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

DECISION:

The representative's decision dated September 29, 2011, reference 01, is reversed. The claimant is not able and available for work effective August 28, 2011 and benefits are withheld until such time as the claimant makes herself available for work to the extent she was available during the base period history. The issue of whether the claimant has been overpaid

unemployment insurance benefits or must repay those benefits is remanded to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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