

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

THERESA SLAYMAKER
Claimant

APPEAL 14A-UI-12418-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING CO
Employer

**OC: 10/26/14
Claimant: Appellant (4/R)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2)j – Benefit Eligibility Conditions – Leave of Absence
Iowa Admin. Code r. 871-24.23(10) – Availability Disqualifications – Leave of Absence

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 24, 2014 (reference 01) unemployment insurance decision that denied benefits based upon not being available for work due to a leave of absence. The parties were properly notified about the hearing. A telephone hearing was held on December 23, 2014. Claimant participated. Employer opted not to participate, according to a December 16, 2014 letter from its agent Equifax.

ISSUE:

Is the claimant able to and available for work effective October 26, 2014?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant is employed part-time as a donut maker working about 11 hours per week at \$9.25 per hour. She shares hours with two other donut makers. She was off work from October 24 through November 30, 2014 due to a non-work-related medical condition and surgery. Her medical care provider restricted her from lifting or using one hand for three weeks and kept her off work for four weeks. She returned to full-duty work on December 1.

Claimant testified that she limited herself to working six hours per week at Casey's to avoid a reduction in unemployment insurance benefits. She later offered an apparent contradictory statement that the employer reduced her hours to six per week. Her full-time employer McFarland Dairy Barn has a seasonal layoff from November through February each year.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work between October 26 and November 30, 2014.

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)(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.

Inasmuch as the leave of absence was related to a medical condition that is non-work-related, and the treating physician had not released the claimant to return to work without restriction until December 1, 2014, she has not established her ability to work her regular job duties while still an employee of Casey's through the week ending November 29, 2014. While she may have been able to perform light-work duties, the employer is not obligated to accommodate a non-work-related medical condition. Benefits are allowed, provided she is otherwise eligible; effective November 30, 2014.

DECISION:

The November 24, 2014 (reference 01) decision is modified in favor of the appellant. The claimant is not able to work and available for work effective October 26, 2014. Benefits are allowed effective November 30, 2014, provided she is otherwise eligible.

REMAND:

The issue of whether claimant is making herself available for the usual hours of work per week offered with Casey's, as delineated in the findings of fact, is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

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