

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CASEY K CLOSE**

Claimant

**APPEAL NO. 10A-UI-06136-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TARGET CORPORATION**

Employer

**OC: 03/07/10**

**Claimant: Appellant (5)**

Section 96.4-3 – Able and Available  
871 IAC 24.22(2)(j) – Leave of Absence

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated April 13, 2010, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 15, 2010. Claimant participated. Deb Schuster was a witness for the claimant. Employer participated by Aaron Wedo, Human Resources Technician, and Amy Mosley, Human Resources Business Partner. The record consists of the testimony of Casey Close; the testimony of Deb Schuster; the testimony of Aaron Wedo; the testimony of Amy Mosley; Claimant's Exhibits A-E; and Employer's Exhibits 1-3.

**ISSUE:**

Whether the claimant is on a leave of absence.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a distribution center located in Cedar Falls, Iowa. The claimant was hired on May 12, 2009, to work in the warehouse. Her job duties included driving heavy machinery such as forklifts.

On October 13, 2009, the claimant suffered her first epileptic seizure. The claimant's treating physician Ivo Behaviac, M.D., informed the employer that the claimant could not drive or operate heavy machinery until she has been seizure free for six months from the date of her last episode. (Exhibits A) The claimant also said that she was not to be left alone as it could be dangerous for her to have a seizure and not have anyone nearby to help her. The claimant was placed on Family Medical Leave Act (FMLA) leave and short-term disability.

The employer and the claimant met on November 3, 2009, to have what the employer called an ADA review. Other jobs were reviewed with the claimant that the employer felt met her

restrictions. The claimant did not want to do any of these jobs. Other jobs were offered to the claimant in January 2010; February 2010; and April 2010. The latter two jobs were clerical jobs, but the claimant did not apply for them. The claimant's short-term disability ran out on March 13, 2010. At her request, she was placed on a voluntary leave of absence. The employer permits an employee to go on a four-month leave of unpaid time in an effort to give the employee more time to recover from an illness or injury.

#### **REASONING AND CONCLUSIONS OF LAW:**

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 this case established that the claimant was unable to work for the employer after October 13, 2009, due to work restrictions placed on her by her physician. The claimant has not established that her current problems are due to a work-related injury. She has not provided her employer with a physician's certification that she has fully recovered from her injury or illness. In addition, the claimant is presently on a negotiated leave of absence with her employer. She was previously on approved FMLA leave and was paid short-term disability

benefits. She is now on an unpaid leave of absence from her employer which can last up to four months.

The claimant has failed to show that she is eligible for unemployment insurance benefits. Benefits are denied.

**DECISION:**

The decision of the representative dated April 13, 2010, reference 01, is modified without effect. The claimant is not currently eligible for unemployment insurance benefits.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

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