

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CONNIE M MINTO
Claimant

HY-VEE INC
Employer

APPEAL 19A-UI-04697-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/12/19
Claimant: Appellant (4R)

Iowa Code § 96.4(3) – Able and Available
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 June 5, 2019, (reference 01) unemployment insurance decision that denied benefits based upon claimant's availability for work. The parties were properly notified about the hearing. A telephone hearing was held on July 3, 2019. Claimant participated. Employer participated through store director Chris Gordy and was represented by Lisa Harroff. Claimant's Exhibits 1 through 6 were received.

ISSUES:

Is the claimant able to work and available for work effective May 12, 2019?
Is the claimant on an approved leave of absence?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on October 12, 2012. Claimant last worked as a full-time assistant manager. Claimant requested a leave of absence to have surgery on her right hand. Employer approved claimant to take a leave of absence from January 28 through April 28, 2019. By the end of claimant's leave of absence, claimant's doctor had not released her to return to work. Employer allowed claimant to take vacation time until she could return.

Claimant exhausted her vacation time on May 17, 2019.

Claimant submitted a two-week notice of resignation on May 20, 2019. Employer accepted the resignation effective immediately.

On May 24, 2019, claimant's doctor released her to return to work with restrictions of no repetitive work with hands and no heavy lifting.

The Benefits Bureau of Iowa Workforce Development has not issued an initial decision on whether claimant's separation from work disqualifies her from receiving unemployment

insurance benefits and whether claimant is able to and available for work after her separation from employment.

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 from May 12, 2019, through May 20, 2019, as claimant was on a voluntary leave of absence.

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".

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:

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

(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 requested and was given a leave of absence that was in place from the effective date of her unemployment insurance claim on May 12, 2019, through the end of her employment on May 20, 2019. Accordingly, benefits are denied during that time period.

The issues of whether claimant is disqualified from receiving benefits based on her separation from employment on May 20, 2019, and is considered able to and available for work thereafter will be remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

DECISION:

The June 5, 2019, (reference 01) decision is modified in favor of appellant. The claimant is not able to work and available for work from May 12 through May 20, 2019, due to a voluntary leave of absence. Benefits are withheld during that time period.

REMAND:

The issues of whether claimant is disqualified from receiving benefits based on her separation from employment on May 20, 2019, and is considered able to and available for work thereafter are remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

Christine A. Louis
Administrative Law Judge
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Decision Dated and Mailed

cal/scn