

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JACQUELINE G TARKPOR
Claimant

**RIVERSIDE CASINO AND GOLF RESORT
PAYROLL**
Employer

APPEAL NO. 15A-UI-05793-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/19/15
Claimant: Appellant (1)

871 IAC 24.23(10) – Leave of Absence

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated May 5, 2015, reference 02, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on June 26, 2015. Claimant participated. Employer participated by Bobbi Adamson.

ISSUE:

The issue in this matter is whether claimant is on an approved leave of absence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on April 15, 2015. On April 27, 2015 claimant was granted FMLA and a leave of absence was granted by the employer. Since that date claimant has continued to be on a leave. Claimant is to go back to the doctor on July 2, 2015. At that time claimant may be granted a release to return to work. That release has not been granted as of yet.

REASONING AND CONCLUSIONS OF LAW:

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.

The administrative law judge holds that the evidence has established that claimant has been on an approved leave of absence since April 27, 2015. Claimant is not eligible for unemployment benefits while on an approved leave of absence.

DECISION:

The decision of the representative dated May 5, 2015, reference 02, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/pjs