

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHRISTA M SYKES
Claimant

MOSAIC
Employer

APPEAL 17A-UI-08108-JP-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/02/17
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Able and Available
Iowa Admin. Code r. 871-24.23(10) – Availability Disqualifications – Leave of Absence

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 4, 2017, (reference 06) unemployment insurance decision that denied benefits as of June 18, 2017. The parties were properly notified about the hearing. A telephone hearing was held on August 28, 2017. Claimant participated. Employer participated through hearing representative Gloria Ambler and human resource generalist Bobbie White. Human resource manager Shanda Hiatt and program manager Heather Van Gorp attended the hearing on behalf of the employer. State human resource manager Teresa TeKolste observed the hearing on behalf of the employer. Claimant exhibit A was admitted into evidence with no objection. Employer Exhibit 1 was admitted into evidence with no objection. Official notice was taken of the administrative record, including claimant's benefit payment history, with no objection.

ISSUES:

Is the claimant able to work and available for work effective June 18, 2017?

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 was hired on May 3, 2017, as a full-time direct support associate. Claimant last worked for the employer on June 14, 2017, but is still considered an employee. On June 14, 2017, claimant's doctor provided the employer with claimant's work restrictions due to her pregnancy. Employer Exhibit 1. Claimant's work restrictions included: "no lifting, pulling, or pushing greater than 20 pounds[,] 10-15 minute rest breaks every two hours if she spends the majority of her work time on her feet[, and a]ccess to water at her work station during the work shift." Employer Exhibit 1. Part of claimant's normal job duties included being able to push, pull, or lift more than twenty pounds. When the employer received claimant's work restrictions, it decided to take her off of work while it determined if it could accommodate her work restrictions. Ms. White informed claimant that she was off work until the employer determined if it would be able to accommodate her work restrictions. After June 14, 2017, the employer updated claimant daily about the employer's progress in determining if they could accommodate her work restrictions.

On June 19, 2017, the employer determined it could not accommodate claimant's work restrictions. On June 20, 2017, the employer met with claimant and informed her it could not accommodate her work restrictions. The employer informed claimant she could take a leave of absence and provided her a copy of the employer's policy regarding leave of absences. Employer Exhibit 1. The employer told claimant if she did not want to accept the leave of absence, she could resign and reapply once her work restrictions were lifted. The employer did not tell claimant she would be fired if she did not accept the leave of absence.

On June 30, 2017, claimant sent the employer an "EMPLOYEE REQUEST FORM" requesting a medical leave of absence starting June 15, 2017 because of her doctor restrictions with her pregnancy. Employer Exhibit 1. The employer granted claimant's request for a medical leave of absence. Employer Exhibit 1. The employer asked claimant to keep it updated about her work restrictions during her leave of absence. On July 17, 2017, the employer had not heard from claimant, and Ms. White contacted claimant about her restrictions. Claimant indicated nothing had changed with her restrictions. As of August 28, 2017, claimant has not been released to return to work with no restrictions.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that claimant is not able to work and available for work.

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.

On June 20, 2017, the employer informed claimant it could not accommodate her work restrictions, but it offered her the opportunity to take a leave of absence. On June 30, 2017, claimant requested and was given a leave of absence due to her work restrictions from her pregnancy starting June 15, 2017. Employer Exhibit 1. The employer advised claimant to keep it updated about her work restrictions. Claimant has not been released to return to work without restrictions. Accordingly, benefits are denied.

DECISION:

The August 4, 2017, (reference 06) decision is affirmed. Claimant is not able to work and available for work effective June 18, 2017. Benefits are denied effective June 18, 2017 until such time as claimant becomes otherwise eligible.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/rvs