

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CYNTHIA WESTON
Claimant

APPEAL NO. 12A-UI-12176-VS

**ADMINISTRATIVE LAW JUDGE
DECISION**

IA DEPT OF TRANSPORTATION
Employer

OC: 09/09/12
Claimant: Appellant (1)

Section 96.4-3 – Able and Available
871 IAC 24.23(10) – Approved Leave of Absence

STATEMENT OF THE CASE:

The claimant filed an appeal from a decision of a representative dated October 1, 2012, reference 01, which held that the claimant was ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on December 21, 2012, in Davenport, Iowa. The claimant participated personally. The employer participated by Barb West, Field Manager. Debra Campbell represented the employer. The record consists of the testimony of Cynthia Weston; the testimony of Barb West; Claimant's Exhibit A; and Employer's Exhibit One.

ISSUE:

Whether the claimant is on an approved 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 claimant worked for the employer as a full time driver's license clerk senior. She was hired on August 1, 1998. One of the requirements of the claimant's job is that she have a valid driver's license.

The claimant was arrested for OWI on May 13, 2012. As a result of that arrest, the claimant lost her driving privileges effective August 10, 2012. Her license is scheduled to be restored on February 5, 2013.

The claimant was placed on an unpaid leave without pay on August 9, 2012. The leave extends until February 5, 2013. (Exhibit One)

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.

The claimant is not eligible for unemployment insurance benefits. She is on a leave of absence without pay from the employer. This is considered under Iowa law as a voluntary period of unemployment and the claimant is therefore not eligible for unemployment insurance benefits.

DECISION:

The decision of the representative dated October 1, 2012, reference 01, is affirmed. The claimant is not eligible for unemployment insurance benefits as of September 9, 2012.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs