

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHERRY I LYNCH
Claimant

APPEAL NO. 17A-UI-10591-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAMILY DOLLAR STORES OF IOWA LLC
Employer

OC: 09/10/17
Claimant: Appellant (2R)

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

STATEMENT OF THE CASE:

Sherry Lynch (claimant) appealed a representative's October 12, 2017, decision (reference 02) that concluded she was not eligible to receive unemployment insurance benefits as of September 10, 2017, because she requested and was granted a leave of absence from work from Family Dollar Stores of Iowa (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for November 3, 2017. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the claimant is available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked for the employer from January 29, 2017, to July 19, 2017 as a cashier. On July 18, 2017, during work hours, the claimant asked the employer if she could step outside and roll up her vehicle's windows because it was starting to rain. The employer gave the claimant permission to do so. The claimant fell in the employer's parking lot and immediately reported the incident to the employer.

On July 19, 2017, the claimant woke up to intense pain and notified the employer she could not work. The claimant completed a first report of injury over the telephone with her store manager. The store manager knew the claimant was going to see her physician on July 19, 2017. Later on July 19, 2017, the claimant gave her store manager the doctor's note restricting her lifting to fifteen pounds or less. The employer told the claimant it did not have work for her until she could lift fifty pounds. The claimant is able to run a cash register with her weight restriction.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the claimant is eligible to receive unemployment insurance 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.

When an employee requests and is granted time off, she is considered to be unavailable for work. In this case, the claimant did not request a leave of absence. The change in hours was initiated by the employer. No disqualification should be imposed.

Iowa Admin. Code r. 871-24.23(1) provides:

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

(1) An individual who is ill and presently not able to perform work due to illness.

When an employee is ill and unable to perform work due to that medical condition, she is considered to be unavailable for work. The claimant was released to return to work with restrictions by her physician. She is considered to be available for work because her physician stated she was able and available for work. The claimant is not disqualified from receiving unemployment insurance benefits. Benefits are allowed, provided the claimant is otherwise eligible.

The issue of the claimant's separation from work is remanded for determination.

DECISION:

The representative's October 12, 2017, decision (reference 02) is reversed. The claimant is able and available for work. Benefits are allowed, provided the claimant is otherwise eligible. The issue of the claimant's separation from work is remanded for determination.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs