

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CHASITY L SCHINDLER
Claimant

TERRACON CONSULTANTS INC
Employer

APPEAL NO. 15O-UI-14253-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 07/19/15
Claimant: Appellant (4)**

Iowa Code § 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated October 16, 2015 reference 01, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on January 25, 2016. Claimant participated personally. Employer participated by Linda Royals and Linda Holten. Claimant's Exhibits A and B were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Employer and claimant agreed that claimant would receive a leave of absence that would be covered by FMLA from February 4, 2015 through April 29, 2015. Claimant had a protected job through this time period. Her job became unprotected after the expiration of this period.

Claimant remained on leave through July 7, 2015. On that date employer sent a letter to claimant terminating her from her employment. Claimant called employer on July 5, 2015 asking for information needed for claimant to return to work. Employer did not return this call. Claimant was not cleared to return to work at the time when she made her call to employer. Employer did not alert claimant in advance of ending claimant's leave and terminating her employment that said employment would be terminated without employer gaining knowledge as to when claimant would be able to return to work.

Claimant forwarded a note from a medical practitioner which stated that claimant was cleared to return to work on July 23, 2015. This note was created on August 14, 2015, and no doctor had seen claimant between July 7, 2015 and August 14, 2015. Claimant received information that she was no longer covered by her former employer's long term disability plan effective July 23, 2015. Since the date of August 14, 2015 claimant had been attempting to secure employment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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)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.

Employer and claimant agreed to extend the leave of absence beyond the period of FMLA benefits as claimant had not been cleared to return to work by April 29, 2015. Employer continued to allow claimant to be on a leave after that date. Employer did not make any requests or alert claimant that her job was in jeopardy prior to claimant's job termination. Employer made the unilateral decision to terminate claimant's employment. As claimant had no

way of knowing when the end of her leave of absence was to be prior to her termination, claimant had no way to force an expedited doctor's visit in order to see if she could get clearance to return to work to avoid termination. Benefits are allowed.

The allowance of benefits in this matter is controlled by claimant's ability to return to work. Claimant was not seen by a medical professional allowing her to return to work until August 14, 2015. Benefits are withheld for the period of time between July 7, 2015 and August 14, 2015. On August 14, 2015 claimant obtained a full medical release to return to work. Benefits shall be allowed effective August 14, 2015.

DECISION:

The decision of the representative dated October 16, 2015, reference 01 is modified in favor of the claimant. Claimant is eligible to receive unemployment insurance benefits, effective August 14, 2015, provided claimant meets all other eligibility requirements. Claimant is ineligible to receive unemployment benefits from July 7, 2015 until August 14, 2015 as she was not cleared by a doctor after an evaluation to return to work.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/pjs