

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBORAH A ESTLUND
Claimant

APPEAL NO: 12A-UI-10991-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 07/29/12
Claimant: Appellant (1/R)

Section 96.4-3 – Able and Available
871 IAC 24.22(2)j – Leave of Absence

STATEMENT OF THE CASE:

Deborah A. Estlund (claimant) appealed a representative's September 10, 2012 decision (reference 02) that concluded she was not qualified to receive unemployment insurance benefits in connection with her employment with Hy-Vee, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 9, 2012. The claimant participated in the hearing. Sabrina Bentler of Corporate Cost Control appeared on the employer's behalf and presented testimony from two witnesses, Aaron Luna and Mike Miller. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was the claimant eligible for unemployment insurance benefits by being able and available for work? Was there period of voluntary unemployment through a leave of absence?

FINDINGS OF FACT:

After prior periods of employment with the employer, the claimant returned to working for the employer on November 21, 2011. She worked part time (16 – 18 hours per week) as a wine and spirits clerk at the employer's Davenport, Iowa store. She worked on that basis through June 16, 2012.

The claimant accepted a full-time job at a bank in Illinois which she began working on or about June 4, 2012. She initially believed that she would be able to continue working with the employer on Saturdays and weeknights, but she soon learned she would not be able to do so. She advised the employer that she needed to go on an indefinite leave of absence status; the employer agreed, and instructed the claimant to let it know if or when she again became available for work. It was agreed that the last day the claimant would work was June 16.

The claimant's bank job ended on or about July 30. Because of other family obligations, she did not immediately seek to return to employment with the employer. In a response to an August 23

text message from her manager Luna inquiring about her availability, the claimant indicated that she was no longer working at the bank; Luna advised her to get in contact with the employer's scheduler when she was ready to go back on the schedule.

The claimant contacted the scheduler on August 30 to indicate she was now ready to go back on the schedule. As the September schedule had already been set, the scheduler advised the claimant that she would be put on the schedule in October; she resumed working on October 1.

REASONING AND CONCLUSIONS OF LAW:

For each week for which a claimant seeks unemployment insurance benefits, she must be able and available for work. Iowa Code § 96.4-3. In general, an employee who is only temporarily separated from her employment due to being on a leave of absence is not "able and available" for work during the period of the leave, as it is treated as a period of voluntary unemployment. 871 IAC 24.22(2)j; 871 IAC 24.23(10).

The claimant's unemployment from the employer beginning June 17 was due to her being on a leave of absence for other employment and personal reasons. The claimant was not ready to change her status until August 30. Because by that time the employer had already set its schedule for the next month, it reasonably could not end the claimant's leave until September 30; therefore, the leave requested by the claimant did not end until September 30. The period of June 17 through September 30, 2012 is treated as a period of voluntary unemployment; she is therefore not eligible to receive unemployment insurance benefits for that period.

An issue as to whether since October 1, 2012 the claimant might be eligible for partial unemployment insurance benefits, if she has been working under her same hours and wages, and whether the employer's account is subject to charge arose during the hearing. This issue was not included in the notice of hearing for this case, and the case will be remanded for an investigation and preliminary determination on that issue. 871 IAC 26.14(5).

DECISION:

The representative's September 10, 2012 decision (reference 02) is affirmed. The claimant was not able and available for work effective June 17 through September 30, 2012, and the period of temporary separation was a period of voluntary unemployment not attributable to the employer. The claimant is not qualified to receive unemployment insurance benefits for that period. The matter is remanded to the Claims Section for investigation and determination of the partial unemployment and same hours and wages issues.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs