

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARNISHA L GLOVER
Claimant

APPEAL NO. 13A-UI-13140-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 10/20/13
Claimant: Appellant (1)

871 IAC R.24.23(10) - Leave of Absence

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated November 20, 2013, reference 01, which held that the claimant was ineligible for unemployment insurance benefits. After due notice, a hearing was held on December 17, 2013. The claimant participated personally. The employer participated by Dzemal Grcic, benefits counselor. The record consists of the testimony of Marnisha Glover; the testimony of Dzemal Grcic, and Claimant's Exhibit A.

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 works at the Tyson Fresh Meats plant located in Waterloo, Iowa. She was hired on April 6, 2012, as a full-time production worker. The claimant's last day of actual work was August 28, 2013. She is presently off work due to a medical leave of absence for a non-work-related condition. The claimant has been released for light duty work as of October 21, 2013. She is only able to work at a desk job. (Exhibit A) The employer does not provide light duty for non-work-related conditions. She is still considered an employee and her leave of absence will last until February 4, 2014.

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. The evidence established that the claimant is on an approved leave of absence for a non-work-related condition. The employer is not obligated to provide light duty work for the claimant. The claimant will be allowed to return to work when she is given a full duty release. Benefits are therefore denied as of October 20, 2013.

DECISION:

The decision of the representative dated November 20, 2013, reference 01, is affirmed. Unemployment insurance benefits are denied effective October 20, 2013.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs