

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESSICA M HAZELWOOD
Claimant

APPEAL NO. 07A-UI-10472-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**CARGILL MEAT SOLUTIONS
CORPORATION**
Employer

**OC: 10/14/07 R: 03
Claimant: Respondent (2)**

Section 96.4(3) – Able & Available
871 IAC 24.1(113) – Separations from Employment

STATEMENT OF THE CASE:

Cargill Meat Solutions Corporation filed a timely appeal from the October 31, 2007, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on November 29, 2007. Claimant Jessica Hazelwood participated. Katie Holcomb, Human Resources Manager, represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant, which records indicate that no benefits have been disbursed to the claimant in connection with the claim established October 14, 2007. The parties waived formal notice on the issue of whether the claimant has been able to work and available for work since establishing her claim for benefits.

ISSUES:

Whether there has been a separation from the employment. There has not.

Whether the claimant has met the able and available requirements of Iowa Code section 96.4(3) since establishing his/her claim for benefits. She has not.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Jessica Hazelwood commenced her full-time employment with Cargill Meat Solutions Corporation on May 22, 2007 and continues to work as a first-shift production worker. Ms. Hazelwood was absent from her shifts due to illness on October 8, 9, 10, 11, 12 and 15. The employer has a written attendance policy that required Ms. Hazelwood to notify the employer at least 30 minutes before the scheduled start of her shift during each day she was absent. The policy is contained in an employee handbook that Ms. Hazelwood received at the time of hire. On October 8, Ms. Hazelwood properly reported her absence to the employer by leaving a message that she would be absent due to illness. On October 9, Ms. Hazelwood properly reported her absence by leaving a message indicating that needed to commence a leave of absence due to personal illness. Ms. Hazelwood had been diagnosed with depression and sought treatment during the absence. Ms. Hazelwood did notify the employer of her absences on October 10, 11, 12 or 15.

Ms. Hazelwood contacted the employer on October 15, indicated a desire to return to the employment and made arrangements to meet with Assistant Human Resources Manager Melissa Skinner. The employer decided to treat the absence as an approved leave and returned Ms. Hazelwood to the employment. Ms. Hazelwood returned to her duties on October 16, 2007.

Ms. Hazelwood established a claim for unemployment insurance benefits that was effective October 14, 2007. Ms. Hazelwood applied for benefits based on advice provided to her by her union and prior to learning that the employer would allow her to return to the employment.

REASONING AND CONCLUSIONS OF LAW:

Workforce Development rule 871 IAC 24.1(113) provides as follows:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

Based on the evidence in the record, the administrative law judge concludes there has been no separation in the employment. The evidence indicates instead that, during the period of October 8 through 15, Ms. Hazelwood was on a leave of absence that she requested. Accordingly, Ms. Hazelwood would not be eligible for benefits. However, no further disqualification would enter.

Iowa Code section 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".

871 IAC 24.22(1)a and (2) provide:

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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

(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.

Where 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. 871 IAC 24.23(10).

The evidence indicates that Ms. Hazelwood was not able and available for work during the period of her approved leave of absence at the time she established her claim for benefits and was not eligible for benefits while she continued on the leave of absence.

Where the claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market, the claimant will be considered ineligible for benefits. 871 IAC 24.23(23).

The evidence indicates that Ms. Hazelwood has been employed by Cargill Meat Solutions Corporation on a full-time basis since she returned from her leave of absence on October 16, 2007. Accordingly, Ms. Hazelwood has not met the availability requirements of Iowa Code section 96.4(3) since that time.

DECISION:

The Agency representative's October 31, 2007, reference 01 is reversed. There was no separation from the employment and, accordingly, the claimant is not eligible for benefits based on a theory that she separated from the employment. No further disqualification, based on an alleged separation, is necessary. The claimant has not met the availability requirements of Iowa Code section 96.4(3) since establishing her claim and, accordingly, is not eligible for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css