

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERRY K HAMMERS
Claimant

APPEAL NO. 11A-UI-10162-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MORSE HEALTHCARE SERVICES INC
Employer

OC: 06/19/11
Claimant: Respondent (2-R)

Section 96.4-3 - Able to and Available for Work

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated July 25, 2011, reference 01, that concluded the claimant was able to and available for work. A telephone hearing was held on August 29, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. Mary Morse-Bolton participated in the hearing on behalf of the employer with a witness, Kristine Morse.

ISSUE:

Was the claimant able to and available for work?

FINDINGS OF FACT:

The claimant worked full-time as a medication manager from May 4, 2005, to June 18, 2011. She lives in Talmage, Nebraska, and the facility she worked in was in Sidney, Iowa, which involved a 33-mile commute across the Highway 2 bridge over the Missouri River.

As a result of the closure of the Highway 2 bridge due to flooding on June 18, 2011, the claimant was required to travel about 100 miles one way to get to work.

The claimant decided that it would be difficult for her to commute the extra distance to work, particularly because her husband has serious health problems and did not want to be that far away in case her husband needed her.

The claimant requested and was granted a leave of absence from the employer until the bridge situation is resolved. She has not quit employment and has not been discharged by the employer. She has been looking for local work.

The employer itself is unaffected by the flooding on the Missouri River and has workers from Nebraska who continue to commute from work.

The claimant filed for and received a total of \$3,648.00 in unemployment insurance benefits for the weeks between June 19 and September 17, 2011.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code § 96.4-3.

871 IAC 24.22(2)j(1)(2) provides:

Benefit 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.

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.

Based on the above rule, the claimant is ineligible for benefits, since she is on a leave of absence from the employer due to reasons not caused by the employer and partially due to the claimant's personal situation. As it stands, the employer's account is being charged for benefits paid out due to a natural disaster it did not cause.

In addition, 871 IAC 24.23(29) provides:

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

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

The employer has no lack of work in this case. The employer's work has not been affected by the bridge closing, and the claimant's scheduled hours would be available if the claimant's personal circumstances allowed her to commute the distance to work.

While the claimant's personal circumstances are compelling, the law and rules do not provide for the granting of benefits under the facts of this case.

The unemployment insurance law requires benefits to be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the

overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated July 25, 2011, reference 01, is reversed. The claimant is disqualified to receive unemployment insurance benefits, effective June 19, 2011. If circumstances change and the claimant believes the disqualification should be lifted, she should contact her local Workforce Development Center. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw