

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMBER D JOHNSON
Claimant

KAKAR INC
Employer

APPEAL NO: 13A-UI-13177-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

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

Section 96.4-3 – Able and Available
871 IAC 24.22j(1),(2),(3) – Leave of Absence

STATEMENT OF THE CASE:

The claimant appealed a department decision dated November 20, 2013, reference 01, that held she is on a leave of absence that is a voluntary period of unemployment on October 20, 2013, and benefits are denied. A telephone hearing was held on December 18, 2013. The claimant participated. Jeff Gillette, Owner participated for the employer.

ISSUES:

Whether the claimant is able and available for work.

Whether claimant is on a leave of absence.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant worked for the employer as a part-time hourly employee from about December 2012 to September 1, 2013. Claimant provided the employer a doctor note she needed to be off work due to a non-job-related health condition. The employer granted the request. There was nothing said about the leave period though the employer usually reviews a leave after sixty days.

Claimant's doctor gave her a note on October 11 she could return to work. He imposed restrictions of no lifting more than ten pounds, and no mopping or sweeping. The lifting was not an issue because claimant worked the cash register but she did mop and sweep at closing. Claimant was not returned to work on the schedule at that time.

When supervisor Gillette learned about claimant's desire to return to work, he met with her. He put her back on the work schedule with a return November 25. He was able to have claimant work around the mopping and sweeping part of the job. There has been no change on the doctor work restrictions.

REASONING AND CONCLUSIONS OF LAW:

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(2)j(1)(2)(3) 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.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

The administrative law judge concludes claimant does not meet the availability requirements of the law due to a leave of absence as of October 20, 2013.

Since mopping and sweeping was part of claimant's job the employer had the right to deny claimant's return to work due to these medical restrictions. The employer has the right to wait until an employee receives an unrestricted work release. Although the supervisor might have been able to provide claimant light duty work like he did beginning November 25, the employer is not obligated to do so.

What the employer could have done is optional to it and not required by law in order for claimant to be eligible for benefits. Claimant was not able to perform all of the work tasks of her regular job as of October 11 due to restrictions.

DECISION:

The department decision dated November 20, 2013, reference 01, is affirmed. The claimant does not meet the availability requirements of the law on October 20, 2013. Benefits are denied.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

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