

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**GEORGINA MARTINEZ**  
Claimant

**APPEAL NO. 13A-UI-03198-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 02/10/13**  
**Claimant: Appellant (4-R)**

Section 96.4-3 – Able and Available  
871 IAC 24.23(10) – Voluntary Leave of Absence

**STATEMENT OF THE CASE:**

Georgina Martinez (claimant) appealed a representative's March 13, 2013 decision (reference 02) that concluded she was not eligible to receive unemployment insurance benefits as of February 10, 2013, because she was granted a leave of absence from employment with Hy-Vee (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 10, 2013. The claimant participated personally through interpreter Ike Rocha. The employer was represented by Julia Church, Hearings Coordinator, and participated by Brad Reikofski, Manager of Store Operations.

**ISSUE:**

The issue is whether the claimant is available for work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on October 22, 2009, as a part-time kitchen clerk. The claimant requested and the employer granted her a personal leave of absence from February 17 to April 6, 2013. She was laid off from her full-time job from February 8 through March 4, 2013, and went to Mexico to visit her mother.

**REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge concludes the claimant is not eligible to receive unemployment insurance benefits.

871 IAC 24.23(10) provides:

(10) 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.

When an employee requests and is granted a leave of absence, she is considered to be voluntarily unemployed. The claimant requested a personal leave of absence and the employer granted her request. The request was initiated by the claimant. She is considered to be voluntarily unemployed during the period of the personal leave of absence. The claimant is not eligible to receive unemployment insurance benefits from February 17 to April 6, 2013, because she was not able and available for work

The issue of whether the claimant was partially unemployed for the week ending February 16, 2013, is remanded for determination.

**DECISION:**

The representative's March 13, 2013 decision (reference 02) is modified in favor of the appellant. The claimant is not eligible to receive unemployment insurance benefits from February 17 to April 6, 2013, because she was not able and available for work. The issue of whether the claimant was partially unemployed for the week ending February 16, 2013, is remanded for determination.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs