

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALBERTA M CARTER
Claimant

IAC IOWA CITY LLC
Employer

APPEAL 16A-UI-10696-JP-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/17/16
Claimant: Respondent (2)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(10) – Availability Disqualifications – Leave of Absence

STATEMENT OF THE CASE:

The employer filed an appeal from the September 23, 2016, (reference 02) unemployment insurance decision that allowed benefits as of September 4, 2016. The parties were properly notified about the hearing. A telephone hearing was held on October 14, 2016. Claimant did not participate. Employer participated through senior human resources generalist Trisha Semelroth. Senior human resources technician Erin Pals attended the hearing on behalf of the employer.

ISSUES:

Is the claimant able to and available for work?

Is the claimant on an approved leave of absence?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was hired on April 20, 2012, full-time, as an injection operator. Claimant worked a set schedule, Monday through Friday, from 3:00 p.m. to 11:00 p.m.

Claimant was granted Family and Medical Leave Act (FMLA) leave that started August 25, 2016 and ended September 9, 2016. Claimant used FMLA leave on September 5, 6, 7, 8, and 9, 2016. Claimant returned to work on Monday, September 12, 2016, working her full-time scheduled shift. Claimant was not under any work restrictions when she returned to work. Claimant's FMLA leave was not a work related injury/illness; the leave was personal in nature.

The employer had a voluntary layoff from August 29, 2016, through September 9, 2016, but because claimant was on FMLA leave and unable to work, she was not offered to go on voluntary layoff (employees have to be able to work to be eligible for the voluntary layoff). The employer would call employees to see if they wanted to work or not, but because claimant was on FMLA leave, the employer was not able to call her to see if she wanted to work. Claimant did not call the employer between August 25, 2016 and September 9, 2016 requesting to come

back early from FMLA leave. If an employee did not want to take the voluntary layoff, they would have been allowed to continue working for the employer. There was work available for claimant if she was not on FMLA leave. Claimant received a short term disability payment from the employer's third party administrator for the period August 25, 2016 through September 11, 2016 based on her FMLA leave.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that claimant is not able to work and available for work for the week ending September 10, 2016.

Iowa Code § 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".

Iowa Admin. Code r. 871-24.22(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.

Iowa Admin. Code r. 871-24.23(10) provides:

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

(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.

Iowa Admin. Code r. 871-24.23(1) provides:

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

(1) An individual who is ill and presently not able to perform work due to illness.

Claimant was granted FMLA leave starting August 25, 2016 and ending September 9, 2016. Therefore, claimant was not able to and available for work during this period. Claimant was also not eligible for the temporary layoff offered by the employer because she was on FMLA leave. Accordingly, benefits are denied for the week ending September 10, 2016.

DECISION:

The September 23, 2016, (reference 02) decision is reversed. Claimant was not able to and available for work for the week ending September 10, 2016. Benefits are denied for the week ending September 10, 2016.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/rvs