

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CINDY MCELWEE**  
Claimant

**APPEAL NO: 16A-UI-06908-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HOME DEPOT USA INC**  
Employer

**OC: 05/22/16**  
**Claimant: Appellant (2-R)**

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

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the June 17, 2016, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 11, 2016. The claimant participated in the hearing. The employer did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

**ISSUE:**

The issue is whether the claimant is able and available for work.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant came down with the flu and was off work from May 3 through May 14, 2016. She applied for and was granted family and medical leave (FML). She received a full release to return to work May 15, 2016, but the employer has not returned her to the schedule.

On May 13, 2016, the claimant's physician faxed her full release to the employer and the claimant emailed a copy of it to the employer. On May 16, 2016, the claimant mailed a copy of her release to the employer. On May 13, 2016, the employer's human resources department notified the claimant it had received her release and indicated it would get back to her within five days with a designation notice. On June 13, 2016, the employer sent the claimant a designation notice stating the claimant's FML ended May 15, 2016.

The employer refused to place the claimant back on the schedule and has told her that employment was terminated. The issue of the claimant's separation from employment has not yet been heard or adjudicated by the Claims Section of Iowa Workforce Development.

## **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work.

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".

The claimant had a severe case of the flu that kept her off work from May 3 through May 14, 2016. She requested and was granted FML for that period of time and received a full release without restrictions effective May 15, 2016. The claimant has no medical restriction or other limitation on her employability effective May 15, 2016, but the employer continues to refuse to place her back on the schedule. The claimant has demonstrated she is able and available for work and is not on an approved leave of absence. Accordingly, benefits are allowed.

The issues regarding the claimant's separation from employment are remanded to the Claims Section of Iowa Workforce Development for an initial interview and adjudication.

## **DECISION:**

The June 17, 2016, reference 02, decision is reversed. The claimant is able to work and available for work effective May 22, 2016, which is her original claim date for benefits. Benefits are allowed, providing the claimant is otherwise eligible. The issues regarding the claimant's separation from employment are remanded to the Claims Section of Iowa Workforce Development for an initial interview and adjudication.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs