

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**MELEA A HARRIMAN**  
Claimant

**APPEAL NO: 19R-UI-05289-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**J & L INVESTMENTS INC**  
Employer

**OC: 04/28/19**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the May 16, 2019, reference 01 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 26, 2019. The claimant participated in the hearing. Brie Hall, General Manager, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the claimant is able and available for work and whether she was on a leave of absence.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant is employed as a swing shift manager at J & L Investments (McDonalds). On April 15, 2019, the claimant texted the employer stating she had bed bugs at her house. She went in to work April 16, 2019, but was sent home until she could have her house exterminated. The claimant called an exterminator and he confirmed she had bed bugs but the claimant could not afford the \$1,400.00 that company charged to fumigate the house. She called around and eventually found an exterminator she could afford. On April 24, 2019, she told the employer her house was getting treated sometime during the next week. She did not contact the employer to notify it when the exterminator was done. On May 2, 2019, the employer told the claimant she was on the May 7, 2019, schedule to begin working May 9, 2019. The claimant's mother provides her childcare and had picked up extra shifts with her employer while the claimant was off work. The claimant told the employer she could not return to work until May 14, 2019, when her mother's schedule reverted to the way it was prior to the claimant being off work and she could again provide childcare for the claimant's children. The claimant returned to work May 14, 2019.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was on a leave of absence and was not able 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".

Iowa Admin. Code r. 871-24.22(2)(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:

(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.

While the claimant did not request a leave of absence, given the extremely contagious nature of bed bugs, the employer could not have her working around other employees and in the restaurant. Consequently, it told her she could return after her house was fumigated and she was on a leave of absence beginning April 16, 2019. Once the exterminator fumigated the claimant's house, she did not contact the employer immediately to be put back on the schedule but instead the employer contacted her May 2, 2019, and notified her she was on the May 7, 2019, schedule to start work May 9, 2019. At that time, however, the claimant did not have childcare and was not able and available for work. Although it is unfortunate the claimant had bed bugs, the employer acted reasonably in telling her she could not work until the bed bugs were taken care of by the exterminator as it was a health hazard. Because the claimant was on a leave of absence and was not able and available for work, benefits must be denied.

**DECISION:**

The May 16, 2019, reference 01, decision is affirmed. The claimant was not able and available for work and did take a leave of absence from April 16, 2019 to May 14, 2019. Benefits are denied effective the week ending May 4, 2019.

---

Julie Elder  
Administrative Law Judge

---

Decision Dated and Mailed

je/scn