

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**FELICIA G SOHN**

Claimant

**APPEAL NO. 10A-UI-15499-A**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT & COMPANY**

Employer

**OC: 09/26/10**

**Claimant: Appellant (2)**

871 IAC 24.23(10) – Leave of Absence  
Section 96.4-3 – Eligibility for Benefits

**STATEMENT OF THE CASE:**

Felicia G. Sohn filed a timely appeal from an unemployment insurance decision dated November 8, 2010, reference 01, that denied benefits to her upon a finding that she had requested and was granted a leave of absence. After due notice was issued, a hearing was held in Des Moines, Iowa, on January 7, 2010, with Ms. Sohn participating and presenting additional testimony by Stanley Saywahn. Claimant Exhibits A and B were admitted into evidence. The employer, Swift & Company, did not respond to the hearing notice.

**ISSUES:**

Has the claimant requested and been granted a leave of absence?

Does the claimant meet the eligibility requirements to receive unemployment insurance benefits?

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Felicia G. Sohn began employment with Swift & Company on May 11, 2009. Her last day of work with the company was September 21, 2010. Ms. Sohn worked on the ham line in a cold area. Her physician has restricted her from working in cold environments. Swift & Company has no work available for Ms. Sohn that meets her medical requirements. The employer placed Ms. Sohn on a leave of absence. This allows her to bid on other positions. She has bid on three so far, but has not been successful. Ms. Sohn is also seeking other employment consistent with her medical restrictions and with her work skills. Most recently, she applied for work as a dishwasher at a local casino.

**REASONING AND CONCLUSIONS OF LAW:**

The first question is whether the evidence establishes that Ms. Sohn requested and received a leave of absence. It does not.

871 IAC 24.23(10) denies unemployment insurance benefits to individuals who have requested and been granted a leave of absence. The rule states that a person in such a position is voluntarily unemployed. The evidence in this record establishes that Ms. Sohn did not request the leave of absence but that it was unilaterally granted by the employer. Denial of benefits under 871 IAC 24.23(10) is not appropriate.

The remaining question is whether the evidence establishes that the claimant meets general eligibility standards. It does.

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".

The record shows that the claimant is unemployed through no fault of her own. It establishes that although she cannot perform her most recent job, there are jobs in her local labor market area that meet her medical restrictions and for which she has the requisite job skills. Finally, the record establishes that the claimant is actively seeking employment. Under these circumstances, benefits must be allowed.

**DECISION:**

The unemployment insurance decision dated November 8, 2010, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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