

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**MICHELLE A FRANZ**

Claimant

**APPEAL NO: 19A-UI-01253-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IA DEPT OF HUMAN SVCS/WOODWARD**

Employer

**OC: 01/13/19**

**Claimant: Respondent (2R)**

Iowa Code § 96.4(3) – Able and Available

Iowa Admin. Code r. 871-24.22(2)j – Benefit Eligibility Conditions – Leave of Absence

Iowa Admin. Code r. 871-24.23(10) – Availability Disqualifications – Leave of Absence

**STATEMENT OF THE CASE:**

The employer filed an appeal from the February 6, 2019, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on February 28, 2019. The claimant did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing. The employer participated through Trenton Kilpatrick, hearing representative with Corporate Cost Control. Diane Stout and Amy Monaghan testified.

The administrative law judge took official notice of the administrative records including the fact-finding documents. Employer Exhibit 1 was admitted into evidence. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Is the claimant on an approved leave of absence?

Is the claimant able to work and available for work effective January 13, 2019?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began full-time employment in 2014 as a residential treatment worker. Due to an injury on the job, the claimant went on an approved leave of absence (through worker's compensation) from October 6, 2018 until December 1, 2018. While on her leave of absence, the claimant incurred a personal injury to her right arm. As a result, even though she was released by a treating physician for her hip injury through worker's compensation, effective December 1, 2018, she had restrictions for her personal injury, which indicated she could not use her right arm at all. The claimant remained on a personal leave of absence from December 2, 2018 through January 23, 2019, when she was released without restrictions from her doctor for her personal injury. The claimant established her claim for unemployment

insurance benefits during this period, with an effective date of January 13, 2019. Since January 24, 2019, she has returned to full-time work with this employer.

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

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work. Benefits are denied.

For an individual to be eligible to receive benefits, the claimant has the burden to show she is able to work and available for work, as required by the unemployment insurance law. Iowa Code § 96.4(3). For the period of December 2, 2018 through January 23, 2019, the claimant was on a personal leave of absence due to a personal injury to her right arm.

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. 871-24.22(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.

The claimant requested and was given a leave of absence for personal injury for the period from December 2, 2018 to January 23, 2019. Accordingly, benefits are denied for the period of January 13, 2019 (when the claimant established her claim for unemployment insurance benefits) through January 23, 2019, because she was on an approved leave of absence.

Since January 24, 2019, the claimant has returned to work for this employer, and is working full-time without restrictions.

Iowa Admin. Code r. 871-24.23(23) provides:

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

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

Inasmuch as the claimant resumed full-time employment with Iowa Department of Human Services/Woodward on January 24, 2019, she is no longer unemployed and does not meet the availability requirements. Accordingly, the claimant is ineligible for benefits beginning January 24, 2019 due to full-time employment.

**REMAND:** The issue of whether the claimant has been overpaid benefits is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

**DECISION:**

The February 6, 2019, (reference 01) decision is reversed. The claimant is ineligible for benefits beginning January 13, 2019, due to being on an approved leave of absence and then returning to full-time employment. She does not meet the availability benefits according to Iowa law.

**REMAND:** The issue of whether the claimant has been overpaid benefits is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

jlb/scn