

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOY D ZHORNE
Claimant

APPEAL NO. 10A-UI-17107-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**ST LUKES METHODIST HOSPITAL
HUMAN RESOURCES**
Employer

**OC: 11/07/10
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated December 8, 2010, reference 01, which denied benefits as of November 7, 2010 upon a finding the claimant was not able to perform work. After due notice, a telephone conference hearing was held on January 25, 2011. Claimant participated personally. The employer participated by Threasa Saxon, Benefit Coordinator.

ISSUE:

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

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Joy Zhorne began employment with St. Luke's Methodist Hospital on May 12, 2008 and worked as a full-time housekeeper. Ms. Zhorne's last day of work at St. Luke's Methodist Hospital was October 27, 2010. The claimant had been limited to 20 pounds of lifting by her physician, however, the employer required that the claimant be fully able to perform her job functions in the housekeeping department. Ms. Zhorne requested and applied for an approved medical leave of absence leaving her absences mutually agreed to by the parties. The employer is holding the claimant's job position or a similar position open for the claimant until a return date of approximately February 14, 2011. Ms. Zhorne in turn plans to return to employment with St. Luke's Hospital at the expiration of the approved leave of absence.

REASONING AND CONCLUSIONS OF LAW:

The question for the administrative law judge is whether the evidence in the record establishes that Joy Zhorne is able and available for work as required by the provisions of the Iowa Employment Security Act.

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".

871 IAC 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.

A leave of absence negotiated with the consent of both parties, the employer and the employee, is deemed a period of voluntary unemployment for the employee-individual and the individual is considered ineligible for benefits for the period. 871 IAC 24.22(2)(j). If at the end of a period of negotiated leave of absence the employer fails to re-employ the employee-individual, the individual is considered laid off and eligible for benefits. 871 IAC 24.22(2)(j)(1). 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. 871 IAC 24.22(j)(2).

The evidence in the record establishes that the claimant and St. Luke's Hospital voluntarily negotiated a leave of absence with the consent of both parties. Accordingly, benefits are denied effective November 7, 2010.

DECISION:

The representative's decision dated December 8, 2010, reference 01, is affirmed. The claimant is not able and available for work and is on a negotiated leave of absence. Benefits are denied effective November 7, 2010.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs