

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHELE D WALES
Claimant

APPEAL NO. 11A-UI-03725-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CENTRAL IOWA KFC INC
Employer

OC: 02/20/11
Claimant: Appellant (1)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated March 18, 2011, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on April 13, 2011. Claimant participated. Employer participated by Julie Mangold, Area Supervisor. The record consists of the testimony of Julie Mangold and the testimony of Michele Wales.

ISSUE:

Whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer operates sixteen KFC restaurants. The claimant was the general manager of the store in Knoxville, Iowa. She was hired on November 18, 2009, and was a full-time employee. The claimant's last day of actual work was February 5, 2011.

On February 6, 2011, the claimant was taken to the emergency room because she was suffering from chest pains. She was admitted into the hospital. Information concerning the claimant's condition was limited. Julie Mangold did try repeatedly to get in touch with the claimant. One of the claimant's relatives also worked at the restaurant and he provided some information. The claimant spoke to Ms. Mangold on February 10, 2011. The claimant said she was not sure about her condition. Ms. Mangold said that two weeks were covered but that she would need some doctor's information on how long the leave would last. The claimant got upset. She never again contacted the employer and has not returned to work.

The claimant's physicians have still not diagnosed her condition. She has been advised to limit her stress. The claimant has never asked the employer for fewer hours or any accommodation nor has she presented herself for work.

REASONING AND CONCLUSIONS OF LAW:

871 IAC 24.22(2)j(1)(2)(3) provides:

Benefit 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.

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.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

The claimant established an original claim for benefits on February 20, 2011. At that time she was still on a leave of absence from her employer while she recovered from chest pains. The claimant testified that she applied for unemployment benefits because of reduced hours. The claimant said that she needed to reduce her stress levels and work fewer hours. The claimant's testimony on whether she could work or at what level was confusing and inconsistent. She told her employer that she needed to be off at least two weeks. She testified that she was actively looking for work when she applied for unemployment benefits. She then testified that she her doctors still had not pinpointed the nature of her condition and her ability to work was uncertain. The claimant had only one direct contact with the employer on February 10, 2011, at which time she was still recovering from her illness.

The employer clearly was operating under the assumption that the claimant was on a leave of absence and was unable to work. The claimant was still being actively treated and made no effort to return to work for the employer under any circumstances. The most reasonable inference from the evidence is that the claimant was granted a leave of absence and was voluntarily unemployed. She was not able and available for work. Benefits are denied.

DECISION:

The decision of the representative dated March 18, 2011, reference 01, is affirmed. The claimant is not able and available for work as of February 20, 2011.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css