

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TERESA L BENSON**  
Claimant

**APPEAL NO. 11A-UI-02792-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PRAIRIE MEADOWS RACETRACK &  
CASINO**  
Employer

**OC: 01/16/11  
Claimant: Appellant (2R)**

Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated February 25, 2011, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 30, 2011. Claimant participated. Employer participated by Teresa Benson, human resources generalist. The record consists of the testimony of Teresa Benson; the testimony of Tracey Casey; and claimant's exhibits A-G.

**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 claimant was employed as a bartender by the employer. The claimant was hired in September 2003. Her last day of work was January 8, 2011. She was placed on layoff on January 11, 2011.

The claimant had applied for Family Medical Leave Act (FMLA) because she needed time to recuperate from a personal illness. The claimant exhausted her FMLA leave on December 16, 2010. The claimant filed a new request for FMLA leave on January 10, 2011. She was her mother's caretaker and she needed to take her mother to Mayo Clinic for treatment. This request for FMLA leave was denied because she had exhausted her entitlement to FMLA leave. The claimant was placed on layoff effective January 11, 2011. The employer's letter placing the claimant on layoff refers to the requirement that the claimant provide a release to return to work within twelve months. The claimant was not requesting FMLA leave for a personal illness but rather for caretaking associated with her mother's illness.

The claimant was scheduled to work on January 11, 2011. She needed to take her mother to Mayo Clinic and so she called in, using the Family Emergency Code. She had an attendance

point she could use and vacation time. The claimant did not return to work after she found out she was on layoff.

The claimant is actively looking for work as a bartender with employers other than this employer.

**REASONING AND CONCLUSIONS OF LAW:**

The only issue in this case is whether the claimant is able and available for work. The representative disqualified the claimant because the claimant was only willing to work for the employer and she was waiting to be recalled from layoff status. Iowa law states that in order for an individual to be eligible to receive benefits there must be a finding that the individual is able to work, available for work, and earnestly and actively seeking work. 871 IAC 24.22(1) and (2)

The evidence established that the claimant is considered to be laid off from the employer as of January 11, 2011. The employer apparently considers the claimant to medically unable to work as a return to work is predicated upon the claimant providing medical evidence she is capable of working. The claimant did ask for additional FMLA leave but she was seeking that leave to care for her mother. In any event, the claimant is on layoff status. The evidence also established, however, that the claimant is actively seeking work as a bartender and is not waiting to return to work for this employer. The administrative law judge concludes, therefore, that the claimant is able and available for work. The claimant is not disqualified from receiving benefits on that basis. Benefits are allowed as of January 16, 2011, provided the claimant is otherwise eligible.

**DECISION:**

The decision of the representative dated February 25, 2011, reference 01, is reversed. The claimant is able and available for work as of January 16, 2011.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/pjs