

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EVILJANA BEGIC
Claimant

APPEAL NO: 12A-UI-07776-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 05/27/12
Claimant: Appellant (1)

871 IAC 24.23(10) – Leave of Absence

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's June 21, 2012 determination (reference 01) that held her ineligible to receive benefits as of May 27, 2012, because she requested and was granted a leave of absence. The claimant participated in the hearing. Dzermal Grcic, the human resource clerk, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant is not eligible to receive benefits as of May 27, 2012.

ISSUE:

Is the claimant eligible to receive benefits when she is on an approved leave of absence?

FINDINGS OF FACT:

The claimant was injured on February 1, 2011. As a result of this injury, she was restricted from working and was off work until March 31, 2012. The claimant's injury was considered a work-related injury until May 28, 2012. When the claimant returned to work on March 31, 2012, she could not use one arm to do any work. Since the claimant's work restriction was initially considered the result of a work-related injury, the employer assigned her to do light-duty work.

In late May 2012, when the claimant's injury was not considered a work-related injury, the employer informed the claimant she was responsible for getting her medical treatments and the employer would no longer assign her light-duty work. The employer does not accommodate work restrictions that are not work-related. The employer also informed the claimant that if she wanted to guarantee she had a job after her June 21 surgery, she needed to request a medical leave of absence.

The claimant wanted to return to her job and provided the employer with a doctor's statement restricting her from working as of late May 2012. The employer granted the claimant a leave of absence as of May 28, 2012. The claimant had surgery on June 21 and expects to be released to work by August 16, 2012. The claimant established a claim for benefits the week of May 27 because she had wanted to work until June 21.

REASONING AND CONCLUSIONS OF LAW:

Each week a claimant files a claim for benefits, she must be able to and available for work. Iowa Code § 96.4(3). When a claimant requests a leave of absence and the employer grants the request, the leave of absence is considered as a voluntary unemployed status and a claimant is not eligible to receive benefits. 871 IAC 24.23(10).

The facts establish the claimant had a choice of either requesting a leave of absence to guarantee she had a job after her surgery or she could call in and ultimately be discharged for excessive absenteeism because the employer would not accommodate her work restrictions. The claimant was in a no-win situation. But, she chose to obtain a doctor's statement and request a leave of absence to guarantee her job after she recovered from her June 21 surgery. Requesting a leave of absence was the claimant's only logical choice. Since the employer approved the leave of absence, she is not eligible to receive benefits as of May 27 or while she is on a leave of absence.

The claimant worked early April to late May 2012, only because the employer accommodated her work restrictions. Since the claimant could not use one arm, her availability to perform meaningful work would be at issue if she had not requested a leave of absence. As of May 27, 2012, the claimant is not eligible to receive benefits, because she chose a leave of absence to guarantee her job after her doctor releases her to return to work.

DECISION:

The representative's June 21, 2012 determination (reference 01) is affirmed. During the time the claimant is on an approved leave of absence, she is not eligible to receive benefits. As of May 27, 2012, the claimant is not eligible to receive benefits. The claimant's ineligibility continues until she reopens her claim and establishes her availability to work.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw