

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CONNIE L SIMMONS

Claimant

APPEAL NO. 10A-UI-14325-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA

Employer

OC: 08/29/10

Claimant: Appellant (1)

Section 96.4-3 - Able and Available
871 IAC 24.22(2)j – Leave of Absence

STATEMENT OF THE CASE:

Connie L. Simmons (claimant) appealed a representative's October 14, 2010 decision (reference 03) that concluded she was not qualified to receive unemployment insurance benefits in connection with her employment with Wells Fargo Bank, N.A. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 3, 2010. The claimant participated in the hearing. Pamela Nuesom of Barnett Associates appeared on the employer's behalf and presented testimony from one witness, Courtney Nevilles. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was the claimant eligible for unemployment insurance benefits by being able and available for work?

Was there period of voluntary unemployment through a leave of absence?

FINDINGS OF FACT:

The claimant started working for the employer on March 23, 2009. She worked full-time as a loan servicing specialist in the employer's West Des Moines, Iowa office. Her most recent day of work was January 8, 2010. Beginning January 9, 2010, she went on a medical leave of absence as well as short-term disability, due to mental and physical health issues, not shown to be related to her work. Her leave status has been extended several times, and as of the date of the hearing was to be effective through December 23, 2010.

The claimant was partially released by her doctor as of October 5, 2010, effective that day. However, the release was only to allow her to work 15 to 20 hours per week, in contrast to the 40 hours per week the claimant had been working through January 8. The claimant did inform the employer of her partial release, but the employer only had full-time positions available. The claimant is uncertain when or if her doctor will release her to full-time duties.

REASONING AND CONCLUSIONS OF LAW:

For each week for which a claimant seeks unemployment insurance benefits, she must be able and available for work. Iowa Code § 96.4-3. In general, an employee who is only temporarily separated from her employment due to being on a leave of absence is not “able and available” for work during the period of the leave, as it is treated as a period of voluntary unemployment. 871 IAC 24.22(2)j; 871 IAC 24.23(10)

The claimant's current unemployment is due to her being on a leave of absence due to a non-work-related medical issue. As the condition causing her temporary unemployment was not related to the work environment, in order to be sufficiently well for the claimant to regain her eligibility status as being able and available for work, she must have a complete recovery to full work duties without restriction. Hedges v. Iowa Department of Job Service, 368 N.W.2d 862, 867 (Iowa App. 1985); Iowa Code § 96.5-1-d. Unemployment insurance benefits are not intended to substitute for health or disability benefits. White v. Employment Appeal Board, 487 N.W.2d 342 (Iowa 1992). For the period the claimant is seeking unemployment insurance benefits, she was under sufficient work restrictions as would preclude her from returning to her regular work duties. She is therefore not eligible to receive unemployment insurance benefits for that period. If she subsequently is fully released and attempts to return to some comparable position with the employer but the employer fails to provide some comparable work, or if there is some other intervening separation, the issue of the separation would then need to be examined, including whether the claimant's unemployment at that time is attributable to the employer.

DECISION:

The representative's October 14, 2010 decision (reference 03) is affirmed. The claimant was not able and available for work effective August 29, 2010, due to being on a leave of absence, and the period of temporary separation was a period of voluntary unemployment not attributable to the employer. The claimant is not qualified to receive unemployment insurance benefits while she is not able to fully return from her leave of absence. Should there be an intervening separation from employment, her eligibility would need to be determined upon an analysis of that separation.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw